

United States 1121  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

---

NEW YORK LIFE INSURANCE COMPANY, a  
Corporation,

Plaintiff in Error,

vs.

MATILDA C. NEASHAM,

Defendant in Error.

---

**Transcript of Record.**

---

Upon Writ of Error to the United States District  
Court of the District of Nevada.

---

FILED

NOV 8 - 1917

F. D. MONCKTON,  
CLERK.



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

NEW YORK LIFE INSURANCE COMPANY, a  
Corporation,

Plaintiff in Error,

vs.

MATILDA C. NEASHAM,

Defendant in Error.

---

Transcript of Record.

---

Upon Writ of Error to the United States District  
Court of the District of Nevada.

---





# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

---

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Affidavit of Reta S. Arkell of Service of Bill of	
Exceptions .....	323
Amended Answer .....	9
Assignment of Error.....	52
Certificate of Clerk U. S. District Court to Trans-	
cript of Record.....	324
Certificate of U. S. District Judge to Bill of Ex-	
ceptions, etc. ....	319
Citation on Writ of Error.....	325
Claimant's Statement No. 1—Proof of Death..	308
Complaint .....	1
Demurrer .....	6

## EXHIBITS:

Exhibit "A" to Complaint—Policy of In-	
surance .....	4
Plaintiff's Exhibit "A"—Policy of Insur-	
ance .....	306
Plaintiff's Exhibit "B"—Statements.....	308
Plaintiff's Exhibit "D"—Photograph .....	314
Plaintiff's Exhibit "E"—Photograph .....	315
Plaintiff's Exhibit "F"—Photograph .....	316
Defendant's Exhibit No. 2—Photograph...	317
Defendant's Exhibit No. 3—Photograph...	318
Friend's Statement No. 3—Proof of Death	312

	Index.	Page
Judgment .....		17
Notice of Motion and Petition for New Trial...		44
Notice of Motion to Make Complaint More Specific and Certain .....		7
Opinion on Motion for New Trial.....		18
Order Allowing Motion for New Trial, etc. ....		50
Order Denying Petition for a New Trial.....		51
Order Directing Transmission to Appellate Court of Certain Original Exhibits.....		322
Order Extending Time to File Record to October 1, 1917 .....		324
Order Extending Time to File Record and Docket Cause to October 1, 1917.....		336
Order Overruling Demurrer, Dated and Entered August 2, 1915 .....		9
Order Retaining Jurisdiction .....		50
Order Staying Execution .....		43
Order Staying Execution and Extending Time for Filing Petition or Motion for New Trial and for Bill of Exceptions.....		43
Petition for Writ of Error.....		68
Petition or Motion for New Trial.....		45
Physician's Statement No. 2—Proof of Death.		310
Proceedings Had March 6, 1916 .....		72
Reply .....		14
Stipulation and Statement In Re Printing Record, in Above-entitled Case, Under Rule 23.		328
TESTIMONY ON BEHALF OF PLAINTIFF:		
ADAMS, BREWSTER (In Rebuttal)...		258
ASHER, Dr. J. A. (In Rebuttal).....		263

Index.

Page

TESTIMONY ON BEHALF OF PLAIN-

TIFF—Continued :

Cross-examination .....	267
Redirect Examination .....	274
BURKE, A. A. (In Rebuttal).....	229
Cross-examination .....	236
CHICK, F. O. (In Rebuttal).....	238
COOL, RAY J. (In Rebuttal).....	220
Cross-examination .....	225
CURNOW, NICHOLAS (In Rebuttal)....	245
Cross-examination .....	249
In Rebuttal .....	261
DANN, F. P. (In Rebuttal).....	217
HARRIS, W. J. (In Rebuttal).....	253
Cross-examination .....	254
Redirect Examination .....	254
Recross-examination .....	255
KEPNER, Mrs. MAY (In Rebuttal).....	279
NEASHAM, JAMES EDWARD (In Re-	
buttal) .....	244
NEASHAM, Mrs. MATILDA C. ....	76
In Rebuttal .....	281
PETERSON, VERDI (In Rebuttal).....	276
RAYMOND, Mrs. MYRTLE (In Rebuttal)	238
Cross-examination .....	242
Redirect-examination .....	243
WOOD, HARRY B. (In Rebuttal).....	256

TESTIMONY ON BEHALF OF DEFEND-  
ANT:

CHICK, F. O. ....	170
Cross-examination .....	180

## Index.

Page

TESTIMONY ON BEHALF OF DEFEND-  
ANT—Continued:

Redirect Examination.....	185
Recross-examination .....	186
COLLINS, FRANK .....	110
Recalled .....	128
Cross-examination .....	128
Redirect Examination .....	141
Recross-examination .....	142
FERRELL, C. P. ....	149
Cross-examination .....	163
Redirect Examination .....	169
Recross-examination .....	169
GIBSON, Dr. S. C. ....	191
Cross-examination .....	203
HAMMERSMITH, GEORGE N. ....	88
Cross-examination .....	90
HILL, HARRY .....	126
Cross-examination .....	127
MORRISON, Dr. S. K. ....	206
Cross-examination .....	211
NEASHAM, Mrs. MATILDA C. ....	147
NEASHAM JAMES EDWARD .....	123
Cross-examination .....	125
READ, THORNTON A. ....	144
UNSWORTH, F. K. ....	92
Cross-examination .....	104
Verdict .....	16
Writ of Error.....	326

*In the Second Judicial District Court of the State  
of Nevada, in and for the County of Washoe.*

Action on Life Policy No. 4,707,986.

MATILDA C. NEASHAM,

Plaintiff,

vs.

NEW YORK LIFE INSURANCE COMPANY,

Defendant.

**Complaint.**

Plaintiff complains of defendant and alleges:

I. That at all times hereinafter stated defendant has been a corporation organized under the laws of the State of New York and authorized to transact business in the State of Nevada, and having and maintaining a Branch Office in the city of Reno, in the county of Washoe, State of Nevada.

II. That heretofore, to wit, on the tenth day of July, A. D. 1914, at Reno, in the county of Washoe, State of Nevada, defendant, in consideration of the payment of the annual premium of four hundred fifty-six and 90/100 dollars (\$456.90), executed and delivered its policy of life insurance numbered 4,707,986, on the life of her husband, William C. Neasham, wherein and whereby defendant promised and agreed to pay plaintiff the sum of Ten Thousand Dollars (\$10,000) upon due proof of the death of said William C. Neasham, a copy of which said policy, together with the endorsements thereon, marked Exhibit "A," is hereto attached and made a part of this complaint.

III. That on the 27th day of February, A. D.

1915, said insured William C. Neasham, husband of the plaintiff, died.

IV. That thereafter, to wit, on the fifteenth day of March, A. D. 1915, plaintiff furnished defendant with due proof of the death of her husband, said William C. Neasham, the insured in said policy of insurance.

V. That at the time said policy of insurance was executed and delivered, and at the time of the death of said insured plaintiff was the wife of said insured and had a valuable interest in the life of said insured.

VI. That plaintiff has performed all of the conditions of said policy of insurance on her part to be performed. [1\*]

VII. *That plaintiff has performed all of the conditions of said policy of insurance on her part to be performed.*

VIII. That defendant has not paid said sum of Ten Thousand Dollars (\$10,000), or any part thereof, and that said sum of Ten Thousand Dollars (\$10,000) has been due and payable even since the fifteenth day of March, A. D. 1915.

WHEREFORE, plaintiff demands judgment against said defendant for the sum of Ten Thousand Dollars (\$10,000), with interest thereon since the fifteenth day of March, A. D. 1915, together with her costs and disbursements herein expended.

THOMAS E. KEPNER,  
Attorney for Plaintiff,  
Journal Building,  
Reno, Nevada.

---

\*Page-number appearing at foot of page of original certified Transcript of Record.



State of Nevada,  
County of Washoe,—ss.

Matilda C. Neasham, being first duly sworn, on her oath deposes and says: I am plaintiff in the above-entitled action; I have read the foregoing complaint and know the contents thereof; that the same is true.

MATILDA C. NEASHAM.

Subscribed and sworn to before me this 30th day of April, A. D. 1915.

[Notarial Seal]      THOMAS E. KEPNER,  
Notary Public, in and for the County of Washoe,  
State of Nevada.    [2]

**Exhibit "A" to Complaint—Policy of Insurance.**

NEW YORK

LIFE

INSURANCE COMPANY

By This Policy of Insurance Agrees to Pay

\*\*\* TEN THOUSAND \*\*\* Dollars

Face  
Amount of  
the Policyat the Home Office of the Company in the City and  
State of New York to Matilda C., wife of the insured

Beneficiary

\*\*\*\* , Beneficiary, (with \*\* the right on the part of  
the Insured to change the Beneficiary as hereinafter  
provided) upon receipt at said Home Office of due  
proof of the death during the continuance of this  
contract, of \*\*\* WILLIAM C. NEASHAM \*\*\* the

Insured

Insured.

This insurance is granted in consideration of the  
payment of the first premium

Premium

of \*\* Four hundred fifty-six 90/100 \*\*\* Dollars

the receipt of which is hereby acknowledged, con-  
stituting payment for the period terminating on the  
Tenth day of July in the year Nineteen Hundred  
and fifteen and the payment of a like sum on said  
date and on the Tenth \*\* day of July \*\* in every  
year thereafter during the continuance of this Policy  
until the death of the Insured.How and  
When  
PayableIncontest-  
abilityThis policy is free of conditions as to residence,  
travel, occupation, or military or naval service, and  
shall be incontestable after one year from its date  
of issue except for nonpayment of premium. After  
its delivery to and receipt by the Insured this Policy



Date Policy  
takes Effect

takes effect as of the Tenth day of July Nineteen Hundred and fourteen.

The benefits and provisions printed or written by the Company on the following pages are a part of this contract as fully as if they were recited at length over the signatures hereto affixed.

In Witness Whereof the NEW-YORK LIFE INSURANCE COMPANY has caused this contract to be signed this Twenty-third day of July, Nineteen Hundred and fourteen.

Examined  
W.  
D.  
M. O. L.  
913-1

DARWIN P. KINGSLEY,  
President.

SEYMOUR M. BALLARD,  
Secretary.

Age 48.

\_\_\_\_\_,  
Registrar.

Insurance Payable at Death: Premiums Payable  
During Life: Annual Dividend.

\* \* \* \* \*

SELF-DESTRUCTION.—In event of self-destruction during the first insurance year, whether the Insured be sane or insane, the insurance under this Policy shall be a sum equal to the premiums thereon which have been paid to and received by the Company, and no more. [3]

[Endorsed]: Original. Hon. Thomas F. Moran. No. 10,842. In the Second Judicial District Court of the State of Nevada in and for Washoe County. Matilda C. Neasham, Plaintiff, vs. New York Life Insurance Co., Defendant. Complaint. Due service of the within by copy, admitted — 191—. ———, Attorney for ———. Filed this 30th day of April, 1915. W. A. Fogg, Clerk. By S. R. Tippet, Deputy. Thomas E. Kepner, Reno, Nevada, Attorney for Plaintiff.

No. 1967. U. S. Dist. Court, Dist. of Nevada. Filed June 8, 1915. T. J. Edwards, Clerk. By H. D. Edwards, Deputy. [4]

---

[Title of Court and Cause.]

### **Demurrer.**

Comes now, New York Life Insurance Company, a corporation, by its attorneys, Cheney, Downer, Price & Hawkins, and demurs to the complaint filed herein, and as grounds for said demurrer states:

1. That the complaint is ambiguous and uncertain in that it does not appear from said complaint whether the insured, William C. Neasham, was or was not guilty of self-destruction.

2. That the complaint does not state facts sufficient to constitute a cause of action.

CHENEY, DOWNER, PRICE & HAWKINS,

Attorneys for Defendant.

I, the undersigned, of counsel for defendant, hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

PRINCE A. HAWKINS,  
Of Counsel for Defendant.

[Indorsed.] [7]

---

[Title of Court and Cause.]

**Notice of Motion to Make Complaint More Specific and Certain.**

To the Above-named Plaintiff, Matilda C. Neasham,  
and to Thomas E. Kepner, Her Attorney:

You and each of you are hereby notified: That the above-named defendant will, on the 2d day of August, 1915, at the hour of 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, in the District Court room in the above-entitled court in Carson City, Nevada, apply to the Court and move for an order herein as follows:

Requiring the plaintiff to make her complaint more specific and certain by stating whether the insured, William C. Neasham, was or was not guilty of self-destruction. Said motion to require the complaint to be made more specific and certain will be made upon the following grounds: That the complaint is too general in its terms to be readily understood,—for the following reasons, to wit: Plaintiff demands judgment against defendant for the sum of \$10,000, with interest thereon from March 15, 1915, together with her costs and disbursements. The cause of action is founded upon a written con-

tract, a copy of which, marked Exhibit "A," is attached to and made a part of plaintiff's complaint.

The said contract bears date July 23, 1914, and it is alleged to have been executed and delivered on July 10, 1914. It is also alleged that said insured, William C. Neasham, died on the 27th day of February, 1915, which said date was "during the first insurance year." The said contract, or [8] life insurance policy, and all parts thereof and statements therein are binding upon plaintiff. The said contract, in part, see pages 7 and 8, reads as follows:

"Self-Destruction. In event of self-destruction during the first insurance year, whether the insured be sane or insane, the insurance under this policy shall be a sum equal to the premiums thereon which have been paid to and received by the company, and no more."

Plaintiff demands judgment for the largest amount possible under the contract, when if required to make the complaint more specific and certain, as above requested, defendant may only be liable, under the facts so stated, for a sum equal to the first premium, and no more, which said first premium amounts to the sum of \$456.90, as stated in paragraph II of the complaint.

That upon the hearing of said motion, as above mentioned, defendant will use and rely upon this notice of motion, and the complaint filed in the above-entitled action.

CHENEY, DOWNER, PRICE & HAWKINS,

Attorneys for Defendant.

[Indorsed.]

[Title of Cause.]

**Order Overruling Demurrer, Dated and Entered  
August 2, 1915.**

It appearing to the Court that on the 7th day of July, last, the defendant filed herein its demurrer and motion to make the complaint more specific, the same having been previously served upon counsel for the plaintiff; and the same having been regularly called this day, and no counsel for the defendant appearing,

Now, on motion of Mr. Kepner, attorney for plaintiff, it is ordered that the demurrer be, and is hereby, overruled, and the motion denied, without an examination of the record, as provided by Rule 42 of this court; and that the defendant have twenty days to answer the complaint. [9]

---

[Title of Court and Cause.]

**Amended Answer.**

Comes now the above-named defendant, New York Life Insurance Company, a corporation, and by leave of Court first had and obtained, filed herein its amended answer, and for answer to the plaintiff's complaint, upon information and belief, says:

1. That the defendant admits the allegations contained in paragraph numbered I of said complaint,—except the defendant denies that it maintains a branch office in the city of Reno, and in that connection alleges that the defendant maintains an office in the city of Reno, but said office is an office of and

with special and limited powers, authority and jurisdiction.

2. That the defendant denies that on, to wit, the 10th day of July, 1914, or at any other time, at Reno, in the county of Washoe, State of Nevada, or elsewhere, the defendant, in consideration of the payment of the annual premium of \$456.90, or on any other consideration, executed and delivered, or executed or delivered to the plaintiff its policy of life insurance on the life of her husband, William C. Neasham. The defendant admits that it made a policy of insurance, which was numbered 4,707,986 on the life of said William C. Neasham, but it denies that it made or delivered the same to the plaintiff or that it therein or thereby promised and agreed, or promised or agreed, to pay the plaintiff \$10,000 upon due proof of the death of said William C. Neasham. And in that behalf, the defendant alleges that in and by the terms of said policy, in the event of self-destruction during the first insurance year, whether the insured was sane or insane, the insurance under said policy shall be a sum equal to the premiums thereon which have been paid to and received by the defendant, and no more.

That the insurance year under said policy commenced on the 10th day of [10] July, 1914, and that during the first insurance year, and on, to wit, the 27th day of February, 1915, said William C. Neasham, the person named as the insured in said policy, destroyed himself and there and then died as the result of a self-inflicted gunshot wound; that thereupon said defendant, upon receipt at its home



office, which is in the city of New York, of due proof of the death of said insured, became, by the terms of said contract, obligated to pay to the plaintiff a sum equal to the premiums thereon which had been paid to and received by the defendant, and no more.

That in truth and in fact said defendant never received any sum whatever as premium on said policy, or otherwise, and said person named therein as the insured never paid or caused to be paid to said defendant any sum of money whatever, nor was any premium, or any part thereof, paid to or received by defendant on or on account of said policy.

3. That the defendant denies each and every of the allegations contained in paragraphs numbered III, IV, and VI of plaintiff's complaint, as therein stated, and alleges that the matters therein referred to are not except as herein stated.

4. That the defendant denies each and every allegation contained in paragraph numbered VII of the complaint, except the defendant admits that it has not paid said sum of \$10,000, or any part thereof. The defendant denies that said sum of \$10,000, or any sum or amount, has been due and payable, or due or payable, since the 15th day of March, 1915, or at any time or date; and denies that it is indebted to the plaintiff in any sum or amount whatsoever.

For an affirmative and separate defense to the alleged cause of action set forth in plaintiff's complaint, defendant, upon information and belief, alleges:

1. That it made a policy of insurance which was numbered 4,707, 986, on the life of said William C.

Neasham; that said policy, in part, reads as follows:

“Self-Destruction.—In the event of self-destruction during the first insurance year, whether the insured be sane or insane, the insurance under the policy shall be a sum equal to the premiums thereon which have been paid to and received by the company, and no more.”

That the insurance year under said policy commenced on the 10th day of July, 1914, and that during the first insurance year, and on, to wit, the 27th [11] day of February, 1915, said William C. Neasham, the person named as the insured in said policy, was discovered dead, with a gunshot wound in the roof of his mouth. That said William C. Neasham, the person named as the insured in said policy, on the 27th day of February, 1915, destroyed himself, and then and there died as the result of a self-inflicted gunshot wound.

2. That thereupon said defendant upon receipt at its home office, which is in the city of New York, or due proof of the death of said insured, became, by the terms of said contract or policy numbered 4,707,986, obligated to pay to the plaintiff a sum equal to the premiums thereon which had been paid to and received by the defendant, and no more; that in truth and in fact, said defendant never received any sum whatever as premium on said policy, or otherwise, and said person named therein as the insured never paid or caused to be paid to said defendant any sum of money whatever, nor was any premium or any part thereof, paid to or received by the defendant on or on account of said policy



3. That said policy No. 4,707,986, in part, reads as follows:

“Miscellaneous provisions. The policy and the application therefor constitute the entire contract between the parties. \* \* \*”

“No agent is authorized to waive forfeitures, or to make, modify or discharge contracts, or to extend the time for paying a premium.”

The said application for and attached to said policy and made a part of the said contract, in part, reads as follows:

“I agree as follows: I. That the insurance hereby applied for shall not take effect unless the first premium is paid and the policy is delivered to and received by me during my lifetime.  
\* \* \*”

That the first premium, nor any part thereof, was not paid during the lifetime of the applicant, William C. Neasham; that neither the first premium or any part thereof or any payment was paid or made when due, or during the lifetime of the said applicant, William C. Neasham, or before the delivery of said policy, or at any time.

WHEREFORE, said defendant, having fully answered plaintiff's complaint, prays that said complaint be dismissed and that it may recover its costs and disbursements herein.

CHENEY, DOWNER, PRICE & HAWKINS,  
Attorneys for Defendant.

JAMES H. McINTOSH,  
Of Counsel.

[Indorsed.] [12]

[Title of Court and Cause.]

**Reply.**

And now comes said plaintiff and for her reply to the amended answer of the defendant company heretofore served and filed, denies and alleges:

I. Plaintiff denies each and every allegation and each and every part of each and every allegation of new matter in said amended answer contained not hereinafter specifically admitted, qualified or denied.

II. Plaintiff denies that either during the first insurance year, or either on the 27th day of February, 1915, or at any other time, said William C. Neasham, either destroyed himself, or either then or there died as the result of a self-inflicted gunshot wound, and in this behalf plaintiff alleges that her husband, William C. Neasham, the insured named in said contract or policy numbered 4,707,986, came to his death on February 27th, 1915, at the hands of some person or persons unknown to plaintiff.

Plaintiff denies the allegation commencing with the words "That in truth and in fact," line 26, page 2, and ending with the words "on or on account of said policy," line 31, page 2, of said amended answer.

III. Plaintiff denies that either during the first insurance year, or either on the 27th day of February, 1915, or at any other time, said William C. Neasham, either destroyed himself, or either then or there died, either as the, or a, result, of either a, or any, self-inflicted gunshot wound, and denies that either thereupon, or otherwise, said defendant either upon receipt at its home office or due proof of the

death of said insured, became, by either the terms of said contract or policy numbered 4,707,986, obligated to pay to plaintiff only a sum equal to the premiums thereon which had been paid to and received by the defendant, and or no more, and in this behalf plaintiff alleges that said defendant *com*-then and there became obligated and bound to pay plaintiff the full amount of said policy, to wit, the sum of ten thousand dollars. [14] And plaintiff denies that either in truth or in fact, or in truth and in fact, said defendant never received any sum whatever as premium on said policy, and denies the allegation "that in truth and in fact, said defendant never received any sum whatever as premium on said policy, or otherwise, and said person named therein as the insured never paid or caused to be paid to said defendant any sum of money whatever, nor was any premium or any part thereof, paid to or received by the defendant on or on account of said policy," as alleged in lines 9 to 14 inclusive, page 4, of said amended answer.

IV. Plaintiff denies the allegation "that the first premium, nor any part thereof, was not paid during the lifetime of the applicant, William C. Neasham; *the* neither the first premium or any part thereof or any payment was paid or made when due, or during the lifetime of the said applicant, William C. Neasham, or before the delivery of said policy, or at any time," as alleged in lines 26 to 31, page 4, of said answer.

V. And for a further reply to the new matter contained in said amended answer plaintiff alleges that her husband, William C. Neasham, the insured named

in said contract or policy of insurance numbered 4,707.986 came to his death on the 27th day of February, 1915, from a gunshot wound inflicted upon him at the hands of some person or persons unknown to plaintiff.

WHEREFORE, having fully replied to the new matter contained in said amended answer plaintiff prays judgment against said defendant company for the sum of ten thousand dollars, together with interest thereon since the 15th day of March, 1915, at the rate of seven per cent per annum, and for her costs and disbursements herein expended.

THOMAS E. KEPNER,  
Attorney for Plaintiff.

[Indorsed.] [15]

---

[Title of Court and Cause.]

**Verdict.**

We, the jury in the above-entitled case, find for the plaintiff in the sum of \$10,689.30.

Dated, March 10th, 1916.

J. S. MITCHELL,  
Foreman.

[Indorsed.] [16]

*In the District Court of the United States for the  
District of Nevada.*

No. 1967.

MATILDA C. NEASHAM,

Plaintiff,

vs.

NEW YORK LIFE INSURANCE COMPANY, a  
Corporation,

Defendant.

**Judgment.**

This cause came on regularly for trial at the February term, 1916, of this court, on the 8th day of March, 1916, the Honorable W. C. Van Fleet, presiding. The parties appeared by their attorneys: Thomas E. Kepner, for the plaintiff; Mr. Hawkins, of the firm of Cheney, Downer, Price & Hawkins, for the defendant. A jury was impaneled and sworn to try the issue; and after hearing the evidence, oral and documentary, arguments of counsel and the instructions given by the Court, and due deliberation thereon, the jury returned their verdict in favor of the plaintiff for the sum of \$10,689.30.

It is therefore ordered that the plaintiff have and recover of and from the defendant, the sum of ten thousand six hundred and eighty-nine 30/100 dollars (\$10,689.30), with interest thereon from this date until paid at the rate of 7% per annum, together with costs of suit, taxed at \$175.72.

Dated, March 10th, 1916.

Attest: T. J. EDWARDS,

Clerk. [17]

[Title of Court and Cause.]

**Opinion on Motion for New Trial.**

Filed July 16th, 1917.

THOMAS E. KEPNER, Reno, Nevada, for Plaintiff.

CHENEY, DOWNER, PRICE & HAWKINS,  
Reno, Nevada, for Defendant.

VAN FLEET, District Judge:

This is a petition for new trial. The action is by the widow of Willam C. Neasham, deceased, to recover on a life policy issued by defendant to her husband in which she is named as beneficiary. The policy, for \$10,000, was issued July 10, 1914. It contains a stipulation avoiding it in the event of self-destruction of the assured, sane or insane, during the first insurance year. Deceased met a violent death February 27, 1915, and the defense was that he died as the result of a self-inflicted gunshot wound—a suicide. The jury found the issue against the defendant and awarded plaintiff a verdict, upon which judgment was entered; and defendant now asks that the judgment be vacated and the verdict set aside.

A number of grounds are advanced in support of the petition, the one principally pressed being insufficiency of the evidence to sustain the verdict, and as to the others, involving alleged errors in law, were maturely considered at the trial, this is the only question which now calls for consideration.

At the close of the evidence the defendant moved the Court for an instructed verdict, which was de-



nied, and this ruling is insisted upon by defendant as involving error. But recognizing the well-defined distinction in the principles applicable to a motion for an instructed verdict and those which obtain upon an application for a new trial, it is contended by defendant that assuming the evidence to be such as to justify the Court in denying the former motion there is nevertheless such an entire lack of any real, [18] substantial controversy on the question as to the cause of the death of the assured, and that the evidence preponderates so strongly in support of the defense, that it is now the imperative duty of the Court to grant the present application and set the verdict aside.

This necessitates a brief consideration of the features of the evidence bearing on the cause of death, all of which was circumstantial.

On the morning of his death the deceased, who resided with his family in Reno, was observed between eight-thirty and nine o'clock walking through town and out along the track of the Southern Pacific Company towards Sparks, and about an hour later was found in a moribund condition lying in a cut or depression by the side of the track some distance east of Reno. He was apparently unconscious when found, but was still breathing in a heavy or stertorous manner. The coroner and sheriff reached the scene some time after ten o'clock, and on their arrival found him dead. The place where the body lay was locally referred to as the "Gravel Pit" or "Oil Pit," a deep sunken way or cut along the railroad track between Reno and Sparks, with a wagon road running through it to facilitate loading and hauling oil

from an oil pipe or tank situated on the railroad right of way. The body was lying on its right side with the right arm partly extended at an angle from the body, and the left lying across the abdomen. A pistol—a Savage automatic of .32 caliber—which the evidence tended to identify as one purchased by the deceased the day before, was lying some few inches from the right hand, and an empty cartridge shell of .32 caliber was found on the ground near the body. The head was lying up the slope of the cut with the feet extending into or near the wagon track. The clothing was not in disorder, except that the hat had fallen off, and there was no evidence at the point where the body lay of any disturbance of the ground to indicate a struggle. The deceased's watch, a small sum in coin, and some other small articles were found on his person. Blood was oozing from the mouth and nostrils, and a fresh bloodstain was found on the right arm of the coat at the elbow. Investigation disclosed a wound in the back part of the throat or mouth a little to the right of the median line, leading through the soft palate and into the brain cavity, of a size sufficiently large to enable the insertion of the [19] middle finger of a man's hand, and so located as not to be visible except by opening the mouth and depressing the tongue; fractured bone could be felt in the wound, and a stellar-shaped fracture of the skull was found on the back part of the head just above and to the right of the occipital protuberance, with a small fraction of skullbone pushed out beyond the regular contour of the skull, but no exit wound through the scalp,—the fracture being on a



line a little upwards from the point of entrance of the wound in the throat. While the autopsy was not such as to definitely disclose the producing cause of the wound, the opinion of the sheriff and doctors was that the wound was from a gunshot; there was no apparent injury to the lips, teeth or tongue, and the testimony of the physicians was to the effect that the wound could not in their opinion have been caused other than by the insertion of the weapon in the mouth without injuring the adjacent organs, unless inflicted while the deceased had his mouth open in the act of yawning or retching, or crying out in agony; and that it was of a character to produce death.

These are in substance the facts relied on by defendant as making in favor of the theory of suicide, and, standing alone, they are perhaps more than ordinarily persuasive of the correctness of that theory. But they do not stand alone. Arrayed against them, or at least with them, are certain additional circumstances disclosed by the evidence, which in an effort to establish suicide purely from circumstances, must be taken into account.

In the first place, the evidence is wholly lacking in anything in deceased's situation tending to disclose motive for taking his own life. He was in what may be termed fairly easy financial circumstances. He was a rancher and stockman, owning a large ranch with stock and other personal property and having his home in Reno. His ranch was under mortgage for \$15,000, but the loan was not due for nearly a year and a half, and the evidence tended without controversy to show that his ranch was worth at least twice

the amount of the mortgage, while he had to his credit in the bank at the time of his death a balance of something over \$800; and nothing was shown to indicate that he was at the time to any extent disturbed over business affairs. He was between forty-seven and forty-eight years of age, a large, [20] strong, robust man, in good health, and of uniformly cheerful disposition; lived very happily with his wife and family, consisting of a number of children—"an ideal family life," as testified by the minister of his church,—attended church frequently and a fraternal organization of which he was a member. The evidence disclosed that he had returned only two days before his death from a visit with his wife and other members of his family to the opening of the Panama-Pacific Exposition in San Francisco, where he had enjoyed himself and appeared very cheerful and happy throughout the trip. He had been in his bank the day before his death, and the President testified that he appeared perfectly normal in manner, while on the morning of his death he was up and about the house as usual with his family, dressed the baby, helped his wife in the kitchen, and was in his usual cheerful mood at the breakfast table; and a friend who met and talked with him for several minutes on the street when he was on his way to the scene of his death testified that he had never appeared more cheerful and contented. It appeared, moreover, that he did not seek or apply for the insurance involved, it having been taken out at the solicitation of an agent of the defendant; and there is no suggestion that at the time the policy was issued, or at any other time,

the idea of self-destruction was even remotely entertained. So much on the question of motive.

The body of the deceased was first discovered by one Lalonde, a sheep shearer temporarily stopping at the time in Sparks. He testified in substance that he was walking on the railroad track and saw deceased lying in the cut and heard him breathing heavily; that thinking there was something wrong he called to two other men whom he saw in the vicinity and they all went down to where deceased was lying, or within a few feet of where he lay, saw the pistol near the body, and concluded that he had shot himself, went to a nearby point and telephoned to the sheriff, and when they returned to the place where the body lay life was extinct. These three men, Lalonde, Brown and Rodolph, afterwards testified at the inquest as to the fact of finding the body, but they had disappeared before the trial and could not be found or produced, and their testimony as taken before the coroner was read by consent. No definite effort, so far as appears, was made at the inquest to identify [21] these men as to their permanent place of abode, their character, antecedents, or mode of life, nor as to how they came to be in the vicinity at the time. They testified that they were out walking and just happened to meet there. One of them testified that they heard no report of a gun.

The evidence tended to show that the ground where the body lay was sandy and damp, and of a character to clearly show the impression of footprints, and there were certain footprints testified to by the officers as having been found about the body. They dif-

ferred somewhat, however, as to the result of their observations in this regard. The coroner testified that "the only tracks were footprints of one person that led to where the body lay"; that he saw no others. The sheriff testified: "Arriving at the scene I found three tracks leading down to where the body was lying; one track leading to the spot, and two other tracks leading to within eight or ten feet of the spot. Those tracks turned and went back, making altogether five lines of tracks, three going and two returning. . . . I saw no tracks other than what I have mentioned." The undertaker who accompanied the officers, stated: "I observed a few tracks coming from the east toward the body. I didn't take much interest in that; I was interested in other matters." No effort was made to identify the tracks or footprints testified to as leading up to the body as those of the deceased, nor was it clearly shown whether those particular tracks stopped at the point where the body lay or were retraced; moreover, the inquiry as to the character of the soil and evidence of tracks was directed generally to "the ground where the body lay," and the fact was not developed whether the condition of the wagon road running through the cut was such that footprints of one walking in the roadway could be readily discerned or followed.

Ex-sheriff Burke, Superintendent of State Police at the time of the death, an experienced officer, testified to making an examination of the place where the body was found, and its immediate surroundings on Sunday, the day after the death, for any indications

of other persons having been in the vicinity; and he stated that at a point about 100 to 125 feet from where the body lay, just across the railroad track, he found tracks in the soft, sandy ground “and observed a place where someone had been lying down.” [22]

There was a discrepancy in the evidence as to the condition of the pistol found by the body of the deceased and the number of unexploded shells it then contained. The shopkeeper who sold the weapon to deceased testified that when deceased bought the pistol he asked him how it worked and to load it; that he informed him that he had but nine cartridges on hand, while the weapon carried more, but deceased said that would be enough, and they were inserted in the magazine before he took the weapon away. There was produced in evidence at the trial the pistol with eight unexploded cartridges and one empty shell, and the sheriff testified in substance that when he picked the weapon up from the ground the hammer was back—that is, the gun in a position to shoot by pulling the trigger—with a shell in the chamber, the others in the magazine, and one empty shell lying on the ground; that he removed the magazine and the shell from the chamber, picked up the shell on the ground, and turned them over, with the weapon, to the coroner, from whose custody they were produced. It was developed on his cross-examination that his testimony at the inquest, as reported in the certified transcript of the proceedings, differed from this in one or two significant respects. It there appeared that when he was there being examined about the



condition and contents of the pistol when picked up, these questions were put and answered: "Q. Is this in the same condition that it was? A. No; I removed the shell from the chamber, and there are nine shells in the magazine. Q. Is it in the same condition? A. It is in the same condition with the exception that the safety was on the trigger; I took the shell out of the chamber, and there are nine in the magazine." And it was shown in this connection that with the "safety on the trigger" the hammer could not be drawn back or cocked or the weapon exploded; that in that condition the weapon was harmless.

As suggested, the autopsy was not carried to a point sufficient to disclose the character of the missile making the wound, if missile it was. The surgeon conducting it, as indicated from his evidence, assuming apparently that the wound was the result of a gunshot and was sufficient to cause death, made no further or more definite examination as to the producing cause of the wound in the throat; the scalp was turned down sufficiently to disclose the nature of the fracture of the skull, but the brain cavity was not opened, nor, so far as appears, was a probe used to search for a bullet, the operator [23] contenting himself with inserting his finger in the opening in the throat. Accordingly the evidence did not disclose whether there was a bullet in the brain, or, if there was, that it was of the same caliber as the empty shell found by the body. Moreover, there was apparently no effort made to ascertain whether the pistol, when picked up, bore

any evidence of having recently been discharged, such as burnt powder or otherwise.

One other circumstance remains to be noticed to which much significance is attached by the plaintiff. When the body of the deceased was brought home from the coroner's there was observed by members of the family on the forehead over the right eye, just at the line of the hair and partly covered by it, evidence of an injury variously referred to by the witnesses as "a dent," "a depression," or "a scar," which the evidence tended to show had never before been observed by the members of deceased's immediate family or others acquainted with him, including his family physician, who had attended the family for 11 years. It was described by the different witnesses as being all the way from an inch and a quarter to two or more inches in length, and three-sixteenths to a quarter of an inch deep—of sufficient depth and length, as one or two expressed it, to partly lay the little finger in it—but with little, if any, discoloration; it was first observed by the undertaker at his undertaking rooms, who said he thought it was a scar and paid no particular attention to it, but he testified that it was not caused by moving the body or handling it after death. The family physician characterized it as a bruise or scar, apparently made with a blunt instrument, which it had taken considerable force to produce—sufficient to knock a man down and perhaps render him unconscious—but as to how recently it had been inflicted, he stated it was impossible definitely to say, for the reason that such a wound, if inflicted

when death shortly ensues, does not take on the same appearance or characteristics as under other circumstances; that the blood, being stopped in its circulation, has not the same tendency to extravasate or cause discoloration, as on a living person, and particularly in an injury to the scalp where the capillaries are not profuse. There was no evidence tending more definitely to disclose when or how this injury was inflicted upon the deceased. [24]

These are, in their material substance, the circumstances bearing upon the manner in which the deceased came to his death. Can it be justly said that, when considered as a whole, they point so inevitably and certainly to the conclusion of self-destruction that the jury as reasonable men were not justified in adopting a contrary view; and that their finding is so lacking in substantial support in the evidence that it is now the duty of the Court to set aside? With a full appreciation of the responsibility, so strongly impressed by counsel as resting upon the Court, to supervise their verdict, and see, so far as lies within the proper exercise of its power, that it speaks the truth, I feel constrained to answer the inquiry in the negative.

Before discussing the facts, it will be well to have in mind the principles which must control in their consideration.

Primarily, the presumption is against self-destruction, and it is one of the strongest presumptions with which courts have to deal; being, as it is, entirely opposed to natural instinct to deliberately take one's own life, the fact will never be inferred



unless the evidence is such as to fairly exclude every other reasonable hypothesis as to the cause of death. Of course, the presumption will not prevail against clear and definite proof; but if the circumstances are consistent with any other reasonable theory the latter must be adopted to the exclusion of that of suicide. These principles have become axiomatic in their application. Elliott on Evidence, sec. 2393-2394. The rule is thus stated by that learned author in the last section:

“No general or definite rule can be stated as to the extent or degree of proof considered sufficient to establish the theory of suicide. It is evident that it must be sufficient to overcome the presumption against the voluntary taking of one’s own life. And if the circumstances proved to establish the theory of suicide leave a reasonable hypothesis that death resulted in any other manner the evidence will be regarded as insufficient. A general rule might be formulated to the effect that the preponderance required of the insurer in order to overcome the proof and presumptions against suicide must be such as to exclude with reasonable certainty any hypothesis of death by accident or by the act of another.”

And as illustrating the strength of the presumption the author states in section 2392:

“The presumption of law is always against suicide; this presumption is so strong that the courts usually require some evidence of an in-

tention of suicide, as the intent is regarded as the gist of the act. This presumption [25] against suicide is also strong enough to rebut the usual and natural inferences that might arise from conditions and circumstances ordinarily pointing to suicide. Thus where the assured was found dead, lying on his back with a pistol in his right hand which was lying across his breast, and there was a pistol or gunshot wound in his right temple, this was held insufficient evidence of suicide."

As graphically stated by the Supreme Court of Kentucky in the leading case of *Aetna Life Insurance Company vs. Milward*, 118 Kentucky 716, 4 Am. & Eng. Ann. Cases, 1092, discussing the reasons underlying the presumption:

"The love of life is instinctive; self-preservation is its first, as it is its strongest law. In the absence of mental derangement, of any known fact calculated to unseat the judgment and to overcome the love of life, the inquiring mind naturally and properly looks for other causes of the deed when death by violence occurs. When all the facts are inconsistent with the theory of suicide, except simply that of the dead body in the presence of its instrument, it would be unnatural and illogical to confine the inquiry to that incident, and declare the death suicide. The act of suicide is not only unnatural, but is highly immoral and criminal. The presumption of law is against it; so is the presumption of fact."

It is true that the presumption is likewise against murder, or the intentional taking of the life of another. Accordingly, if the evidence be such as to warrant the inference either of suicide, murder or accident, the presumption must always be in favor of the latter (*Starr vs. Insurance Company*, 83 Pac. 113; 4 L. R. A. 636); whereas, if the circumstances exclude the theory of accident, but are consonant with either murder or suicide, the question must be left to the jury to determine as between those two conflicting causes. *Aetna Life Ins. Co. vs. Milward*, *supra*.

Examining the circumstances with these principles in view, I think it will readily be seen that the case is not one where the court would either have been warranted in granting an instructed verdict or be justified in setting at naught the finding of the jury.

The three facts most strongly dwelt upon by defendant in support of the theory of suicide are, naturally, the character of the death wound, the purchase of the pistol by deceased so immediately preceding death, and the finding of the weapon in close proximity to the body. As indicated above, these circumstances, picked out of the whole body of the facts and isolated from their associated surroundings, undoubtedly tend to lead the mind, as matter of first impression, to the inference of self-destruction; but it will be found that when considered in the light of precedent they are not even, taken by themselves, to be regarded as of a significance so unerring as to necessarily negative the

theory of death occurring in some other manner. [26] Many cases may be cited based upon circumstances of very similar import and pointing to suicide with a degree of apparent certainty substantially as strong, and in some aspects perhaps even stronger, where the courts have refused to hold that the jury were not justified in finding against the theory of self-destruction.

Thus, in *Aetna Life Insurance Company vs. Milward*, *supra*, the following facts, as stated by the Court, were presented, which, it will be observed, present a case as strikingly significant of suicide in many of its features as the present:

“The insured was found dead from the effects of a pistol shot wound in the head. His body, partially disrobed as he had slept, was discovered lying in a small porch or entry, which was partly enclosed, at the rear of his residence. By his side were two pistols, both loaded, but in one a discharged cartridge. The shot entered his head on the left side, behind the ear, and passed through in nearly a straight line. The two pistols were lying rather to his right side. He was right-handed. His domestic relations were apparently pleasant, being happily married. He had also two young children. His health was good. His mercantile business was prospering satisfactorily. He was about thirty-four years old, and a man of good habits and character. The shot which killed him was fired about dawn November 21st, 1900. It was heard by but one person, who testifies in the

record. The tragedy was unseen by any witness in the case. Appellee, widow of deceased, and her two infants slept in an upstairs room, but were not aroused by the shot. There was no other evidence of violence, nor of the presence of another person at the scene of the killing. The backyard, where it occurred, had walks leading to it which were paved, and would not for that reason have shown tracks. One of the pistols probably belonged to deceased, or had recently been in his possession. It was a nickle-plated Iver-Johnson revolver. The other, a blued steel barrel pistol, was not identified as to its ownership. It was from the latter the fatal shot was fired. There was some evidence that the insured was a man of intense application to business, was of a nervous temperament; that he had a year or so previous to his death consulted a physician, who had advised him to take a rest on account of nervous exhaustion or depression, and that he took a vacation of two or three weeks in the northwest. After his return the physician found him restored to health and quit treating him. A few days before his death deceased complained of pain in the back of his head."

Discussing these facts, the Court says:

"Appellant argues that the verdict is flagrantly against the evidence, because it is contended, the evidence, of which the foregoing is a fair epitome, shows clearly that the death was suicide; or, in any other view of it, fails to show



that the death was caused by accidental means, and therefore there was a failure of proof on behalf of the plaintiff. As indicated, the evidence is wholly circumstantial. It may none the less point as unerringly to a correct conclusion as if detailed by eye-witnesses. . . . Circumstantial evidence tells the story of a past transaction by the similitude between the things shown to have been done and what in the experience of mankind has been found to be generally the cause or result of similar occurrences. From these the mind deduces the most probable cause of the occurrence in question. The result of this process of reasoning has been found to be so unvarying as to justify its adoption as a rule of evidence. The jury were authorized to apply to the facts detailed their knowledge of human nature, and to indulge, in aid of deduction predicated upon the established facts, those presumptions which therefore the law allows."

And it was held that, viewing the evidence in the light of these presumptions, the jury were justified in reaching the conclusion that the death [27] occurred from a cause other than suicide, and that it could not be said that in this process of reasoning the jury were required to "guess" the cause of death.

In *Kornig vs. Western Life etc. Co.*, 102 Minn. 31, 112 N. W. 1039, the facts were, in substance, these:

The deceased was a man of cheerful disposition; living happily with his family, a kind father, and devoted to his children. He had



been moderately successful in business, and immediately before his death was in possession of a considerable sum of money, amounting to several thousands of dollars. There was testimony to the effect that he had slept and lived at home, and got his meals at home, where he had all his things, including his clothing; that his wife had seen him on the day of his death and daily for some time before; but it further appeared that from the 1st day of March up to the 12th day of April, the day of his death, he had had a room rented in a house in Minneapolis. There was evidence tending to show that on the day of his death, he had had trouble with the woman of the house where he had the room, and that he had shot her; that she ran into the street for assistance and that thereupon the officers entered the premises and found deceased dead upon the floor.

As stated by the Court:

“He was lying on his left side, with his left cheek on the floor, his left arm beneath the body, the legs bent at the knees and drawn up, and the right arm so that the hand was on his leg. Loosely gripped in his hand was the revolver, the muzzle of which projected between and below his legs, so that it was visible to one standing in the doorway. In the right side of the head was a bullet wound, about an inch and a half back of the ear. The trend of the bullet was backward and downward. Two or three

cartridges remained in the revolver, which was of a 38 or a 32 caliber. Two or three empty cartridge shells had been extracted from it. Only a small amount of money and some papers were found on the person of the deceased. No one was found in the building in any wise connected with the death of the insured."

Upon these facts it was said by the Court:

"The defendant insists that the testimony demonstrates that this was a case of suicide—pure and simple. The law on this subject is well-settled. There is little controversy as to its formula and a singular unanimity in its application. . . . It is the defendant who must, when circumstantial evidence is relied on, establish such facts as preclude the hypothesis of natural, violent, or accidental death. The burden of proof does not rest on the plaintiff to establish such facts as demonstrate or justify theory of death otherwise than by the hand of the insured himself, in order that the jury may find against death by suicide. 'It is not material that there was not enough evidence to say that murder was done.' O'Rear, J. in *Aetna Life Ins. Co. vs. Milward*, 82 S. W. 364, 365, (and see cases collected at page 366), 118 Ky. 716, 68 L. R. A. 285. Moreover, where the cause of death is in doubt, there is a presumption of law against death by suicide. It is true that there is a corresponding presumption against death by crime. The result of the rule in such a case as this is, as has been well said by Cassoday,

C. J., in *Rohlof vs. Aid Association*, (Wis.) 109 N. W. 989, 991: 'Can it be said as a matter of law that the inferences or conclusions to be drawn from such facts are so clear and unambiguous that reasonable men, unaffected by bias or prejudice, would agree that the deceased intentionally shot himself?'

And it was held that the jury was justified in finding that the case was not one of suicide. In *Fidelity & Casualty Company vs. Lover*, 111 Fed. 773, the facts are sufficiently indicated in the discussion of their effect [28] by Judge Selby, writing the opinion for the Court of Appeals, sustaining the judgment for the plaintiff, where he says:

"Whether Noah committed suicide or not was a question of fact. He was found dead on his bed, only partly dressed, with his feet on the floor, with a pistol loosely grasped in his hand. There was some evidence as to the range of the ball that passed through his head, which tended, or at least was offered, to show that he did not fire the fatal shot. But if it be conceded, as the weight of the evidence seemed to show almost, if not quite, conclusively, that the deceased held the pistol that fired the shot, it is not absolutely certain that he committed suicide. No one saw the shooting, whether it was accidental or intentional is a matter of surmise. There is evidence tending to show that he was despondent and probably tired of life, and evidence tending to the contrary. There is conflict even as to the

wound and its location. The evidence is not entirely inconsistent with the theory of accidental killing. The evidence is presented in detail and at length in the record, and it would serve no useful purpose to state it. In a case very much like this one in many of its features, the Supreme Court has recently held that the trial court did not err in submitting the question of suicide to the jury. *Supreme Lodge vs. Beck*, 181 U. S. 49."

There are other interesting cases that might be referred to, but it would subserve no useful purpose to discuss them. In all of them the facts were strongly, but unsuccessfully, urged by the insurer as practically demonstrating suicide. (See also *National Union vs. Fitzpatrick*, 133 Fed. 694; *O'Connor vs. Modern Woodmen etc.*, 124 N. W. 454; *Metropolitan Life vs. De Vault*, 109 Va. 392.)

Illuminated by the reasoning of these cases, the sinister significance of the facts relied on as making in favor of suicide is greatly modified, if not largely negatived; and when they are considered, as they must be, with all the concomitant circumstances, it is impossible, with a just appreciation of the reasonable deductions to be drawn therefrom, to say that the jury were not warranted in the conclusion reached by them. The one respect in which the instant case can in an essential respect be differentiated from the facts presented in any one of those above cited is in the peculiar character and location of the injury causing death. But, in the first place,

it would be going far to say that such a wound, even if definitely shown to have been produced by deceased's pistol, could not have been the result of accident—from a careless handling or examination of the weapon—especially in view of the fact, which the evidence tends to disclose, that the deceased was unfamiliar with its working. But conceding that that theory is not sufficiently probable as the basis of a verdict, to make it reasonable, very clearly the facts do not exclude the theory of the injury having been received at the hands of another. [29]

It may readily be conceived that it could have been inflicted in a close, deadly struggle with an assailant, or after deceased had been knocked down,—the weapon being inserted in his mouth to stifle his cries for help or to deaden the sound of the explosion. And to account for the absence of any indications of a struggle where the body lay, and the condition of the clothing, it might well be that the assault was committed on the railroad track or at some other point where evidence of a struggle would not be left, and the body carried to the cut and there disposed as found for the very purpose of indicating suicide. The jury may well have reasoned in this way, and it would not, as contended, involve a resort to surmise or speculation, but merely legitimate deduction from the circumstances.

Aetna Life Ins. Co. vs. Milward, *supra*.

So far as the purchase of the pistol is concerned, it is not of controlling significance. It may have been dictated from any one of many considerations in no wise connected with the purpose of deceased



to take his own life. He may have been aware that he was going on a dangerous errand and might need it for protection. And as to the finding of the weapon by the body, that is a feature characterizing so many cases of death by violence as to carry necessarily little weight. As said by the court in *Kornig vs. Western Life etc., Co.*, *supra*, in discussing the circumstance of a revolver found loosely gripped in the right hand of the deceased:

“In the nature of things this circumstance is by no means conclusive. Nothing is more common in the history of crime than to place the means of death near or in the hands of the victim. The revolver was not shown to have belonged to the deceased, nor to have been formerly in his possession. In many reported cases in which the insurance companies have sought to avoid liability on the theory of suicide, the presence of a pistol, in connection with other circumstances, has been held by the courts not to sustain the defense. The fact that a pistol was found in the hand of deceased is not conclusive. In *Leman vs. Manhattan Life Insurance Company*, 15 So. 388, 46 La. Ann. 1189, 24 L. R. A. 589, 49 Am. St. Rep. 348, a man without physical or mental disturbance or financial or family trouble and in good spirits was found dead, with a pistol wedged in the bed of his thumb. The verdict for the beneficiary was sustained. In *Travelers' Insurance Company vs. Nitterhouse*, 38 N. E. 1110, 11 Ind. App. 155, the beneficiary recovered, although the deceased



was found with a bullet hole near the center of his forehead, and with a self-cocking revolver in his right hand—the last three fingers resting on the handle, the index finger on the trigger, and the thumb just back of the hammer. In very many other cases beneficiaries recovered, notwithstanding the presence of the revolver in the immediate vicinity of the deceased.” [30]

Another circumstance should not be overlooked; the pistol found lying by the deceased was a modern, high-power weapon, carrying, as the evidence discloses, steel-jacketed cartridges of great penetrating force, and yet, as we have seen, the projectile fired into deceased's brain, if such was the cause of the wound, made no exit. There are other considerations of a minor character arising upon the evidence tending in a greater or less degree to negative the theory of suicide; such, for instance, as to how, as the body lay, blood could have gotten on the elbow of his coat. They need not be all here adverted to, since it is not now so material how, in fact, the deceased came to his death, as it is that the evidence be shown to involve some reasonable theory of death other than self-destruction; and it would seem that what has been suggested, when taken in conjunction with the very potent although negative circumstance that there is an entire absence of anything in the evidence tending to disclose motive, establishes such a case. The absence of motive, as in a crime, while in no wise conclusive, is, notwithstanding, a consideration which enters strongly into the sum of

the evidence to be considered, in an effort to establish suicide from circumstances.

Thus, in *Modern Woodmen vs. Kozak*, 63 Neb. 146, 88 N. W. 248, discussing the absence of motive, it is said:

“But there is another fact of which the jury could not have been ignorant, namely, the absence of all evidence in the record tending to show a motive inciting to self-destruction. Self-murder is abhorrent to the mind, and common observation teaches that normal men are not driven to the desperation of suicide without some exciting cause of more than ordinary magnitude.”

And see note to *Modern Woodmen etc. vs. Kinche-loe* (175 Ind. 563), 28 Am. & Eng. Ann. Cases, 1259, 1262.

As a result, and after a more than usually painstaking consideration of the record in this case, I am satisfied that there was that in the circumstances presented to the jury to fully warrant the verdict rendered; and that to set their verdict aside would, in effect, be to deny the plaintiff her constitutional right to have the jury pass upon the facts.

This conclusion renders it unnecessary to consider the plaintiff's motion to dismiss the petition for want of due service.

A new trial will be denied. [31]

[Indorsed.] [32]

**Order Staying Execution.**

Minutes of Court, of Date March 10th, 1916.

[Title of Cause.]

\* \* \* On motion of counsel for defendant, it is ordered that execution herein be stayed 42 days, upon the filing of a bond in the sum of ten thousand dollars; and that defendant have 42 days within which to take such further steps herein as advised.  
[33]

---

[Title of Court and Cause.]

**Order Staying Execution and Extending Time for Filing Petition or Motion for New Trial and for Bill of Exceptions.**

Upon application of the above-named defendant, New York Life Insurance Company, a corporation, and good cause appearing therefor, and by consent of plaintiff's attorney, execution upon the judgment entered herein on the 10th day of March, 1916, is hereby stayed for a period of forty-two (42) days from the date of the entry of the judgment herein, upon defendant filing herein and within forty (40) days from the date of the entry of the judgment herein, a bond, subject to the approval of the Court or the Judge thereof, who tried the above-entitled action, properly conditioned with sufficient sureties or surety in the penal sum of \$10,000, in order to give the defendant, and defendant hereby is given, additional time, to wit, forty-two (42) days from the date of the entry of the judgment herein, to file in

the Clerk's office of the above-entitled court its petition or motion for a new trial.

It is further ordered that jurisdiction be and is hereby retained of and over the above-entitled case by said court over and beyond the February term, 1916, in order to enable and permit said defendant to file, and said defendant is hereby given additional time, to wit, twenty (20) days after decision or determination of defendant's said petition or motion for a new trial, within which to prepare, serve, present, have settled and authenticated and to file its bill of exceptions by it reserved; and that defendant's petition or motion for new trial, if filed, and that its bill of exceptions may be presented and allowed, authenticated, served, filed and determined after the expiration of the February Term, 1916, of said court, [34] and for those purposes jurisdiction of this case is hereby retained. This order to be effective only on service on opposite party and filing original in clerk's office.

Dated this 17th day of March, 1916.

WM. C. VAN FLEET,  
District Judge.

[Indorsed.] [35]

---

[Title of Court and Cause.]

**Notice of Motion and Petition for New Trial.**

To the Above-named Plaintiff, Matilda C. Neasham,  
and to Thos. E. Kepner, Attorney for Plaintiff:

Please take notice that the above-named defendant, New York Life Insurance Company, a corpora-

tion, intends to move in the above-entitled court for an order,—

That the verdict of the jury, rendered herein, and the judgment, entered thereon, each be vacated and set aside, and a new trial awarded or granted to the defendant herein upon the grounds generally that the trial court erred in stating the law; that the verdict of the jury has no evidence to support it; or is against the weight of and contrary to the evidence; that the great preponderance of the evidence is against the verdict; that the verdict is due to passion, prejudice or partisan feeling, and upon and for the grounds stated in the petition or motion for new trial, a copy of which said petition or motion for new trial is served herewith.

That said motion will be made upon this notice of motion and petition for new trial, and said petition or motion for new trial, and the minutes of the Court, and upon all the pleadings and proceedings on file in the clerk's office.

CHENEY, DOWNER, PRICE & HAWKINS,  
Attorneys for Defendant.

Dated Reno, Nevada, April 15, 1916. [37]

---

[Title of Court and Cause.]

**Petition or Motion for New Trial.**

Comes now the above-named defendant, New York Life Insurance Company, a corporation, and petitions or moves: That the verdict of the jury, rendered herein, and the judgment, entered thereon, each be vacated and set aside, and a new trial awarded or



granted to the defendant herein, for the following reasons:

1. That the Court erred in refusing to grant, and in overruling and denying, defendant's motion, made at the conclusion of all the evidence offered by the plaintiff, to direct a verdict, and to instruct the jury to return a verdict, for the defendant upon the cause of action asserted in plaintiff's complaint, in so far as plaintiff seeks to recover the sum of \$10,000 as the amount of insurance under said contract, Exhibit "A" to the complaint herein.

2. That the Court erred in ruling and holding, under the pleadings, the opening statement of plaintiff's attorney and plaintiff's proof in chief, that the burden of proof was upon the defendant to establish self-destruction of the insured, William C. Neasham.

3. That the Court erred in allowing, over objection and exception by defendant, A. A. Burke, a witness for plaintiff, to testify that, on the day after the body of insured, William C. Neasham, had been discovered and removed, the witness discovered tracks at and near the place where the body of insured, William C. Neasham, was discovered.

4 That the Court erred in refusing to grant, and in overruling and denying, defendant's motion, made at the conclusion of all the evidence offered by both parties in the case, to direct the verdict and to instruct the jury to return a verdict for the defendant upon the cause of action asserted in plaintiff's complaint, in so far as plaintiff seeks to recover the sum of \$10,000, as the amount of the insurance under said



contract, Exhibit "A" [38] to the complaint filed herein.

5. That the Court erred in refusing to charge the jury as requested in defendant's requested instruction No. 1, which reads as follows:

The jury are instructed that under the evidence in this case and the law applicable thereto, there is no liability against the defendant, New York Life Insurance Company, upon the cause of action asserted in plaintiff's complaint, in so far as plaintiff seeks to recover the sum of Ten Thousand Dollars as the amount of the insurance under said contract, Exhibit "A" to the complaint herein. You are therefore instructed to return a verdict for the defendant upon the cause of action asserted in plaintiff's complaint, in so far as plaintiff seeks to recover a judgment of Ten Thousand Dollars as to the amount of the insurance under said contract, Exhibit "A" to the complaint herein.

6. That the Court erred in refusing to charge the jury as requested in defendant's requested instruction No. 2, which reads as follows:

The jury are instructed that under the facts in this case and the law applicable thereto, there is no liability against the defendant, New York Life Insurance Company, and you are instructed to return a verdict for the defendant.

7. That the Court erred in refusing to submit to the jury the two questions of fact as requested in writing by defendant at the close of all the evidence and before the argument and before the charge to the

jury, said questions of fact so requested to be submitted to the jury, reading as follows:

a. That the insured, William C. Neasham, came to his death from a gunshot wound self-inflicted.

b. That the insured, William C. Neasham, came to his death from a gunshot wound inflicted by some person or persons other than himself.

8. That the Court erred in all, each and every part of its charge to the jury, wherein and whereby the jury was instructed,—

a. That plaintiff has made a *prima facie* case; that self-destruction, in this case, is an affirmative defense, and that the burden is upon the defendant to establish, by a preponderance of the evidence, self-destruction.

b. That self-destruction or suicide means the same thing in this case.

c. That “The term ‘self-destruction’ used in this policy and understood in the law, does not necessarily cover and include every instance in which a man dies as a result of his own act. The term means, and is intended to mean, and is meant to express the instance where the act which produces death is done intentionally, and with the deliberate purpose of producing death. In other words, self-destruction contemplates a union [39] or joint operation of act and intent. It is the intent with which the act is done which distinguishes it from death resulting from accident or negligence. If one is handling a deadly weapon or other instrumentality, in a negligent and careless manner, and as a result is accidentally killed, in such an instance, although death results

from his own act, it is not self-destruction or suicide such as to excuse a defendant's liability, for the intent is absent. In such a case it is what is denominated an accidental death. Whereas, if the same act be done intentionally, with the purpose of taking his life, it is self-destruction in the sense in which that term is used in the policy."

d. That "if the jury find that the act of shooting was done by the deceased, that it was done intentionally, and with the purpose of taking his own life, then, as I have said, whether he was at the time sane or insane, the plaintiff cannot recover. If, on the other hand, the jury find that the shooting was done by the deceased, but that it was done accidentally, or was the result of carelessness, and without the intent or purpose of taking his own life, then under the evidence, the plaintiff will be entitled to a verdict.

9. That the Court erred in so much of its charge to the jury as submitted to the jury to determine any question of fact, except that the insured, William C. Neasham, came to his death from a gunshot wound self-inflicted or inflicted by some person or persons other than himself.

10. That the Court erred in permitting the jury, after it had retired to the jury-room, to deliberate upon the verdict, to receive, have and examine in the juryroom the pistol, magazine and shells, introduced and admitted in evidence marked marked Defendant's Exhibit 1, over objection of defendant.

11. That the verdict of the jury was not sustained by sufficient evidence.

12. That there was no testimony tending to sus-

tain the verdict of the jury.

13. That the verdict of the jury was against the weight of, and contrary to, the evidence.

14. That the verdict of the jury was contrary to the law. [40]

15. Because of other errors in law occurring at the trial and excepted to by the defendant.

WHEREFORE, defendant petitions or moves that the verdict be vacated and set aside, and that a new trial be granted herein.

CHENEY, DOWNER, PRICE & HAWKINS,  
Attorneys for Defendant.

**Order Allowing Motion for New Trial, etc.**

The undersigned, the United States District Judge who presided at the trial of the above-entitled case, in the United States District Court for the District of Nevada, certifies that he hereby allows the foregoing petition or motion, that the verdict of the jury be vacated and set aside, and that a new trial be granted herein, to be filed herein.

WM. C. VAN FLEET,  
District Judge.

[Indorsed.] [41]

---

[Title of Court and Cause.]

**Order Retaining Jurisdiction.**

In the above-entitled case, it appearing that the petition or motion for new trial, heretofore filed in the above-entitled case by defendant, has not been heard or determined; and that by order of Court heretofore made and herein entered jurisdiction was

retained of and over said cause by said court over and beyond the February Term, 1916, for the purposes therein stated; and said term of said court is about to and will expire before said petition or motion for new trial can be heard and determined:

Therefore upon application of defendant, and good cause appearing therefor, it is ordered that jurisdiction be and is hereby retained of and over the above-entitled case by said court over and beyond the May Term, 1916, in order that said petition or motion for a new trial may be heard and determined and to enable and permit said defendant to have settled and to file its Bill of Exceptions by it reserved within the time and in the manner as specified in an order of Court heretofore made and entered herein, and to take such steps as it may be advised concerning the filing of a petition for and suing out a writ of error; and for the purpose of hearing and determining said petition or motion for a new trial, settling, allowing, serving and filing a bill of exceptions, filing a petition for and suing out a writ of error, jurisdiction of this case is retained over and beyond the May Term, 1916.

Dated this 26th day of September, 1916.

WM. C. VAN FLEET,  
District Judge.

[Indorsed.] [42]

---

[Title of Court and Cause.]

**Order Denying Petition for a New Trial.**

Defendant's petition for a new trial herein having been heretofore submitted, and the same having been



duly considered, now, in accordance with the conclusion reached in the opinion this day filed:

It is ordered that said petition be, and the same is hereby denied.

Dated: July 16th, 1917.

WM. C. VAN FLEET,  
District Judge.

[Indorsed.] [45]

---

[Title of Court and Cause.]

**Assignment of Error.**

Comes now the above named, New York Life Insurance Company, a corporation, plaintiff in error in the above numbered and entitled cause, and in connection with its petition for writ of error in this case assigns the following errors which plaintiff avers occurred on the trial thereof, and upon which it relies to reverse the judgment entered herein as appears of record:

I. That the Court erred in overruling the demurrer to the complaint filed in this cause.

II. That the Court erred in overruling the motion interposed by the defendant at the close of plaintiff's evidence for a nonsuit and to direct a verdict upon the cause of action asserted in plaintiff's complaint, in so far as plaintiff seeks to recover the sum of \$10,000.00 as the amount of the insurance under said contract, Exhibit "A" to the complaint herein, for the following reasons:

1. That the cause of action asserted in plaintiff's complaint is founded and based upon a written con-



tract, Exhibit "A," attached to and made a part of the complaint.

2. That it appears from the face of the complaint:

a. That "In event of self-destruction during the first insurance year, whether the insured be sane or insane, the insurance under this policy shall be a sum equal to the premiums thereon which have been paid to and received by the Company, and no more."

b. That the first insurance year under said contract, Exhibit "A" to the complaint, was between the 10th day of July, 1914, and the 10th day of July, 1915.

c. That the insured, William C. Neasham, during said first insurance year, and on, to wit, the 27th day of February, 1915, died.

d. That by the terms of said contract, Exhibit "A" to the complaint, the [46] amount of the insurance thereunder is fixed and determined by the facts applicable thereto as therein stated, and the amount plaintiff would be entitled to receive, as the amount of insurance under said contract, upon the death of the insured, depends upon the fact—did or did not the insured, William C. Neasham, destroy or kill himself.

e. That said insured, William C. Neasham, may have killed or destroyed himself, in which event the insurance under said contract Exhibit "A" to the complaint, was not \$10,000, but was the sum of \$456.90 and no more.

3. That plaintiff's pleadings and proof establish, among other things, the following facts, to wit: That the insured, William C. Neasham, came to his death

from a gunshot wound ; that said gunshot wound was of the head and brain and that death was instantaneous.

4. That to entitle the plaintiff to recover said sum of \$10,000 as the amount of the insurance under said contract, Exhibit "A" to the complaint, it must be made to appear as a fact that the insured, William C. Neasham, is dead and that his death was from some cause by reason of which, under the express terms of said contract, plaintiff is entitled to receive the said \$10,000 ; that while it is admitted in the pleadings and established by plaintiff's proof that the insured, William C. Neasham, came to his death from a gunshot wound, there is no proof of any fact from which it can be determined that said insured, William C. Neasham, did not destroy or kill himself.

5. That plaintiff has failed to establish the material fact, alleged in paragraph IV of the complaint and denied in paragraph 3 of the amended answer, that plaintiff furnished defendant with due proof of the death of the insured, William C. Neasham.

That the proofs of death furnished in evidence by plaintiff do not constitute due proof of death as is required by the contract, Exhibit "A" to the complaint, in that it appears from said proofs of death that the insured came to his death from a gunshot wound of head and brain, and that death was instantaneous ; but it does not appear therefrom whether the insured did or did not destroy himself ; and inasmuch as defendant's obligation, under the contract, Exhibit "A" to the complaint, in case of self-destruction during the [47] first insurance

year, was for a sum equal to the premiums thereon paid to and received by the Company and no more, and that the premium was not \$10,000 and does not exceed \$456.90, the extent of defendant's obligation could not be determined from the proofs of death, in evidence as the proofs of death, furnished by plaintiff to defendant Company.

6. That plaintiff has failed upon the trial to prove a sufficient case for the court or jury—in so far as plaintiff seeks to recover a judgment in the sum of \$10,000, as the amount of the insurance, said amount being one of the sums specified in said contract, Exhibit "A" to the complaint, to be paid to plaintiff, as the amount of the insurance, upon the establishment of certain facts; but the facts essential to plaintiff's right to recover said sum of \$10,000 under said contract, Exhibit "A" to the complaint, as the amount of the insurance, have not been established by plaintiff's evidence.

III. That the Court erred in ruling and holding, under the pleadings, the opening statement of plaintiff's attorney and plaintiff's proof in chief, that the burden of proof was upon the defendant to establish self-destruction of the insured, William C. Neasham, for the following, as well as other, reasons.

This action is upon a contract, Exhibit "A" to the complaint, in the contract it is provided, *inter alia*,—

“Self-destruction. In event of self-destruction during the first insurance, year whether the insured be sane or insane, the insurance under this policy shall be a sum equal to the premiums

thereon which have been paid to and received by the Company, and no more.”

This action being upon a contract conditioned, under certain conditions to pay one sum and under other certain conditions to pay a different sum, upon the death of the insured according to the facts concerning the death; plaintiff was required, therefore, to allege facts, which, if true, would enable her to recover the amount sought; death occurring within the first insurance year, it was essential to the condition precedent to the plaintiff's right to recover the full amount of the policy that she allege and prove facts authorizing a judgment for the full amount of the policy; in order to recover the \$10,000 it was necessary for plaintiff to allege and show by a fair preponderance of the evidence facts enabling her to prove the allegations of her complaint and entitling her to the judgment; no such allegations [48] appear in the complaint and no proof of such facts was made by the plaintiff.

IV. That the Court erred in sustaining objections of the plaintiff to the questions propounded to Dr. Gibson, a witness for defendant, as appears at pp. 110, 111 and 114, bill of exceptions, to wit:

“Q. Can you state the difference between gunshot wound, or a pistol shot wound, made by the pistol being fired close to the object that it strikes, and when it is some distance from the object?”

“Q. If a pistol shot was fired with the pistol close to the anatomy of a human person, right

up close to it, would there be any difference between the character of the wound thus made and the character of a wound received by a bullet from the same pistol fired at some distance from that object?"

"Q. Doctor, from your experience in the practice of your profession, and from your observation in this examination, what is your opinion as to whether this wound was inflicted by the deceased, or by some one else?"

"Q. What is your opinion as to whether the wound was inflicted by William C. Neasham himself, or by another?"

V. That the Court erred in sustaining objections of plaintiff to the questions propounded to Dr. Morrison, a witness for defendant, as appears at pp. 119, 121, bill of exceptions, to wit:

"Q. Assuming that testimony to be true, state whether or not in your opinion, that wound could have been made by a gunshot fired at some distance from the mouth of the deceased?"

"Q. Assuming the testimony of Dr. Gibson as true—I will ask this question, your Honor, to make the record—what is your opinion as to whether or not the wound was inflicted by William C. Neasham himself, or another?"

To all of the questions above mentioned, the Court sustained objections and refused to allow the questions to be answered, to which ruling exceptions were taken as appears from the record.



VI. The Court erred in admitting, over objection interposed by defendant, testimony of the witness Burke as to what he saw on the ground February 28th, the day after the insured was discovered dead or dying, as appears in the bill of exceptions p. 142, 143. At p. 143 said witness was permitted to testify, over objection of defendant,—

“A. I observed tracks in the ground there; the ground was a soft, sandy ground, and had lately thawed out from being frozen; the ground was soft, and I observed tracks there, and observed a place where some one had been lying down.”

It appearing from the witness' testimony that the place mentioned was 100 to 125 feet distant from the place where the body was discovered and it was not shown or attempted to be shown that the place was in the same condition that it was on the day insured came to his death.

VII. That the Court erred in permitting plaintiff, over defendant's objection, to offer in evidence what purported to be a portion of the testimony [49] of witness Farrel, before the coroner, as shown by bill of exceptions, pp. 157, 158, said evidence being, as appears from the record, a portion of purported testimony of witness Farrel given In the Matter of the Inquisition upon the Body of William C. Neasham, Deceased, said witness having previously testified, as appears in the record, Bill of Exceptions, pp. 82, 83, that he did not give the testimony attributed to him in the record “In the Matter



of the Inquisition upon the Body of William C. Neasham, Deceased.” There is no statute providing that such testimony taken before a coroner shall be evidence in any proceeding of any nature or kind whatsoever. The testimony so admitted over objection being,—

“Mr. KEPNER.—I read the portion of the testimony of Charles Farrell appearing on page 7 of the transcript, beginning with line 15. (Reads:) ‘Q. By Mr. Lundsford: Did you take the gun? A. Yes, sir, I picked the gun up. Q. It is here now? A. Yes, sir. This is the gun. Q. Is this in the same condition as it was? A. No; I removed the shell from the chamber, and there are nine shells in the magazine. Q. Is it in the same condition? A. It is in the same condition with the exception that the safety was on the trigger. I took the shell out of the chamber, and there is nine in the magazine. Q. You have the empty cartridge now. A. Yes.’

Mr. KEPNER.—That is the portion which I read to the witness, your Honor,”

VIII. That the Court erred in refusing to grant, and in overruling and denying defendant’s motion made at the conclusion of all the evidence offered by both parties in the case, to direct a verdict and to instruct the jury to return a verdict for the defendant upon the cause of action asserted in plaintiff’s complaint, in so far as plaintiff seeks to recover the sum of \$10,000 as the amount of the insurance under

said contract, Exhibit "A" to the complaint, for the following reasons,—

1. That under the pleadings and evidence in this cause, and the law applicable thereto, there is no liability as against the defendant for, and the defendant is not indebted to the plaintiff in said sum of \$10,000.

2. That the cause of action asserted in plaintiff's complaint is founded and based upon a written contract, Exhibit "A," attached to and made a part of the complaint.

3. That it appears from the record in the cause:

a. That "In event of self-destruction during the first insurance year, whether the insured be sane or insane, the insurance under this policy shall be a sum equal to the premiums thereon which have been paid to and received by the Company, and no more."

[50]

b. That the first insurance year under said contract, Exhibit "A" to the complaint, was between the 10th day of July, 1914, and the 10th day of July, 1915.

c. That said insured, William C. Neasham, during said first insurance year, and on, to wit February 27, 1915, committed self-destruction by a gunshot wound self-inflicted.

4. That by reason of the fact that said insured, William C. Neasham, did destroy or kill himself during the first insurance year, the amount of the insurance was not \$10,000, and, under the terms of said contract, Exhibit "A" to the complaint, the plaintiff is not entitled to recover said sum of

\$10,000, or any other sum or amount greater than a sum equal to the premiums, on said contract or policy, Exhibit "A" to the complaint, which have been paid to and received by the company; and appears from the record herein, and is admitted that the premium on said contract or policy, Exhibit "A" to the complaint, was the sum of \$456.90 and no more.

IX. That the Court erred in refusing to charge the jury as requested in defendant's requested instruction No. 1, which reads as follows:

"The jury are instructed that under the evidence in this case and the law applicable thereto, there is no liability against the defendant, New York Life Insurance Company, upon the cause of action asserted in plaintiff's complaint, in so far as plaintiff seeks to recover the sum of Ten Thousand Dollars as the amount of the insurance under said contract, Exhibit 'A' to the complaint herein. You are therefore instructed to return a verdict for the defendant upon the cause of action asserted in plaintiff's complaint, in so far as plaintiff seeks to recover a judgment of Ten Thousand Dollars as to the amount of the insurance under said contract, Exhibit 'A' to the complaint herein." Bill of Exceptions, p. 191."

X. That the Court erred in refusing to charge the jury as requested in defendant's requested instruction No. 2, which reads as follows:

"The jury are instructed that under the facts in this case and the law applicable thereto, there is no liability against the defendant, New York

Life Insurance Company, and you are instructed to return a verdict for the defendant.”

XI. That the Court erred in all, each and every part of its charge to the jury, wherein and whereby the jury was instructed,—

a. That plaintiff had made a *prima facie* case; that if the insured died from any other cause than self-destruction, plaintiff must recover; that the defense of self-destruction or suicide, which for the present purposes means the same thing, is an affirmative defense and the burden is upon the defendant [51] to establish, by a preponderance of the evidence, with reasonable certainty that the death was the result of self-destruction, rather than accident or mischance. The text of the charge to which these assignments apply reads as follows:

“The evidence shows without conflict, and in fact it is admitted, that the death of the insured occurred during the first year of the existence of the policy; and the main issue, therefore, which I have referred to is as to the manner of that death, since, under the evidence in the case, the plaintiff has made out her cause of action entitling her to recover the stipulated amount of insurance, unless that right is found by you to have been defeated by the act of the deceased in taking his own life.

“If the insured died from any other cause than self-destruction, plaintiff must recover. If he took his own life, whether sane or insane, the verdict must be for the defendant.

“The defense of self-destruction or suicide, which for present purposes means the same thing, is an affirmative defense, and the burden of proving it rests upon the defendant who asserts it. Suicide or self-destruction, being at variance with the ordinary human instincts, and involving a wrongful act, is never to be presumed, but must be proved or established by evidence sufficiently satisfactory to overcome the presumption against it, and to exclude from the minds of the jury every reasonable theory or hypothesis as to the cause of the death of the person involved other than that of self-destruction. The proof is not required to be beyond a reasonable doubt, as in a criminal case, but it must preponderate sufficiently in support of the defense of suicide to overcome the presumption of the innocence of the deceased of the wrong involved in taking his own life, and establish with reasonable certainty that the death was the result of self-destruction, rather than accident, mischance, or violent injury inflicted at the hands of another.”

b. “The term ‘self-destruction’ used in this policy and understood in the law, does not necessarily cover and include every instance in which a man dies as a result of his own act. The term means, and is intended to mean, and is meant to express the instance where the act which produces death is done intentionally, and with the deliberate purpose of producing death. In other words, self-destruction contemplates a



union or joint operation of act and intent. It is the intent with which the act is done which distinguishes it from death resulting from accident or negligence. If one is handling a deadly weapon or other instrumentality, in a negligent and careless manner, and as a result is accidentally killed, in such an instance, although death results from his own act, it is not self-destruction or suicide such as to excuse a defendant's liability, for the intent is absent. In such a case it is what is denominated an accidental death. Whereas, if the same act be done intentionally, with the purpose of taking his life, it is self-destruction in the sense in which that term is used in the policy. While the person whose act is concerned must be conscious of the fact that the act he does is dangerous and may produce death, it is not necessary under such a provision as that involved here, in order to relieve the insurer, that the person taking his life be conscious of the mortal quality or consequence of his act, but only that he knows that the means he employs will cause, or is calculated to cause death or danger to his life." pp. 194-195.

c. "If, on the other hand, the jury finds that the shooting was done by the deceased, but that it was done accidentally, or was the result of carelessness, and without the intent or purpose of taking his life, then under the evidence, the plaintiff will be entitled to a verdict."



d. "All I intend by this suggestion to you is, that if in your examination of this evidence you conclude you cannot account for the death of the deceased in accordance with the theory advanced by either counsel, but you can account for it in accordance with some other theory, which you believe [52] the evidence warrants, you are at perfect liberty to find your verdict according to such theory as suggests itself to your judgment."

e. "The COURT.—Well, that is covered by the charge of the Court, when it instructs the jury that the evidence must enable them to find that the death was the result of self-destruction, or of course the plaintiff would be entitled to recover.

"The burden, gentlemen of the jury, being upon the defendant to establish its affirmative defense that this death was the result of self-destruction, it follows, as I have heretofore suggested to you—perhaps counsel didn't notice it—that that must be sustained, or satisfy you by the greater weight of the evidence that such was the fact; and if it does not, if it leaves you in doubt, then of course the defendant will not have sustained the burden of proof by a preponderance of the evidence, and your verdict will necessarily be for the plaintiff."

That the Court erred in so much of its charge to the jury, above set forth, wherein and whereby the jury was authorized to determine any question of

fact or theory concerning the death of the insured, William C. Neasham, except that the insured came to his death from a gunshot wound self-inflicted or inflicted by some person or persons other than himself.

In that it appears from plaintiff's complaint, plaintiff's reply and defendant's amended answer that the insured came to his death from a gunshot wound—the defendant alleging in its amended answer that the insured came to his death as the result of a self-inflicted gunshot wound, while plaintiff in her reply alleges that the insured “came to his death on the 27th day of February, 1915, from a gunshot wound inflicted upon him at the hands of some person or persons unknown to plaintiff”; the issue, and only issue, of fact being whether or not the insured destroyed himself by gunshot wound as maintained by the defendant, or whether the insured came to his death from a gunshot wound inflicted upon him at the hands of some person or persons other than insured, as maintained by plaintiff; there was no issue of accident, mischance or grounds under the pleadings for the jury to speculate or theorize and the charge to the jury above set forth, permitted the jury to find for the plaintiff upon a theory of the case which was not in issue as made by the pleadings.

XII. The verdict of the jury is not sustained by the evidence:

1. The verdict of the jury, upon all the evidence, in so far as plaintiff sought to recover the sum of \$10,000 should have been in favor of defendant, for the following reasons:

A. That under the pleadings and evidence in this case, and the law [53] applicable thereto, there is no liability against the defendant company, and the defendant is not indebted to the plaintiff in the said sum of Ten Thousand Dollars.

B. That the cause of action asserted in plaintiff's complaint is founded and based upon a written contract, Exhibit "A" attached to and made a part of the complaint.

C. That it appears from the record in this cause:

a. That "in event of self-destruction during the first insurance year, whether the insured be sane or insane, the insurance under this policy shall be a sum equal to the premiums thereon which have been paid to and received by the company, and no more."

b. That the first insurance year under said contract, Exhibit "A" to the complaint, was between the 10th day of July, 1914, and the 10th day of July 1915.

c. That said insured, William C. Neasham, during said first insurance year, and on, to wit, February 27th, 1915, committed self-destruction by a gunshot wound self-inflicted.

D. That by reason of the fact that said insured, William C. Neasham, did destroy or kill himself during the first insurance year, the amount of the insurance was not Ten Thousand Dollars, and under the terms of said contract, Exhibit "A" to the complaint, the plaintiff is not entitled to recover said sum of Ten Thousand Dollars, or any other sum or amount greater than a sum equal to the premium on said contract or policy, Exhibit "A" to the com-

plaint which has been paid to and received by the company. And it appears from the record herein, and is admitted, that the premium on said contract or policy, Exhibit "A" to the complaint, was the sum of \$456.90, and no more.

2. That the verdict of the jury, if for the plaintiff, under the evidence should have been only for the sum of \$456.90 the amount of the annual premium, but plaintiff in open court waived her right to a verdict and judgment for said sum of \$456.90.

XIII. That there was no testimony tending to sustain the verdict of the jury.

XIV. That the verdict of the jury was contrary to the law. [54]

WHEREFORE, defendant, plaintiff in error, prays that the judgment of said Court be reversed.

CHENEY, DOWNER, PRICE & HAWKINS,  
Attorneys for Plaintiff in Error.

[Indorsed.] [55]

[Title of Court and Cause.]

**Petition for Writ of Error.**

To the Honorable WM. C. VAN FLEET, Trial Judge  
of the Above-entitled Action in the Above-  
entitled Court:

Now comes New York Life Insurance Company, a corporation, by its attorneys, and respectfully shows: That on the 10th day of March, 1916, a jury, duly impanelled, found a verdict against your petition and in favor of Matilda C. Neasham, plaintiff

above-named, and upon said verdict a judgment was entered.

That upon said March 10, 1916, a minute order in the above-entitled action was made and entered in words as follows, to wit: "On motion of counsel for defendant, it is ordered that execution herein be stayed 42 days upon the filing of a bond in the sum of Ten Thousand Dollars; and that defendant have 42 days within which to take such further steps herein as advised"; that thereafter and on March 17, 1916, a written order staying execution and extending time for filing petition or motion for a new trial and for bill of exceptions was made, served and entered in the above-entitled action, by which said last-mentioned order execution upon the judgment was stayed for a period of forty-two days from the date of the entry of the judgment, upon defendant filing, within forty days from the date of the entry of the judgment, a bond, subject to the approval of the court or judge thereof who tried the above-entitled action, properly conditioned with sufficient sureties or surety in the penal sum of \$10,000, in order to give defendant, and defendant was thereby given, additional time, to wit, forty-two days from the date of the entry of the judgment to file in the clerk's office its petition or motion for a new trial; and it was further ordered that jurisdiction be and the same hereby is retained of and over the above-entitled case by said Court over and beyond the February Term, [56] 1916, in order to enable and permit defendant to file, and said defendant was



thereby given additional time, to wit, twenty days after decision or determination of its said petition or motion for a new trial, within which to prepare, serve, present, have settled, authenticated, and to file its bill of exceptions by it reserved; and that defendant's petition or motion for a new trial, if filed, and that its bill of exceptions may be presented, allowed, authenticated and served, filed and determined after the expiration of the February Term, 1916, of said court, and for those purposes jurisdiction of the case was thereby retained; that the defendant, within the forty-two days granted by the order, filed its petition or motion for a new trial, which was in due course admitted, and thereafter and on July 16, 1917, the court filed its opinion thereon, and an order was entered in accordance therewith, denying a new trial; that on January 16, 1917, defendant's bill of exceptions was filed and on July 21, 1917, said bill of exceptions was served upon plaintiff's attorney and thereafter and on July 23, 1917, defendant presented its bill of exceptions to the trial judge for allowance and certification, which said bill of exceptions was by the Trial Judge certified and allowed August 7, 1917; and thereafter filed; that by order made at proper times, jurisdiction has been retained over this case from term to term in order that said petition or motion for new trial may be determined and to enable and permit said defendant to have settled and to file its bill of exceptions by it reserved and to take such steps as it may be advised concerning the filing of a petition for and suing out of a writ of error; that upon the order being entered



on July 16, 1917, denying defendant a new trial, judgment in favor of plaintiff and against the defendant became final judgment.

Your petitioner, feeling itself aggrieved by the said verdict and the judgment entered thereon as aforesaid, therefore petitions the Court for an order allowing it to prosecute a writ of error to the Circuit Court of Appeals of the United States for the Ninth Circuit, under the laws of the United States in such case made and provided.

WHEREFORE, the premises considered, your petitioner prays that a writ of error do issue, that an appeal in this behalf to the United States Circuit [57] Court for the Ninth Circuit, aforesaid, sitting at San Francisco, State of California, in said Circuit for the correction of errors complained of and herewith assigned, be allowed and that an order be made fixing the amount of surety to be given by the plaintiff in error, conditioned as the law directs, and upon the giving of such bond as may be required, that all further proceedings may be suspended until the determination of such writ of error by the Circuit Court of Appeals.

CHENEY, DOWNER, PRICE & HAWKINS,  
Attorneys for Petitioner in Error.

Writ of Error granted this 13th day of August, 1917; and supersedeas bond fixed at \$13,500.00, and upon said bond being given by the defendant, Petitioner, New York Life Insurance Company, conditioned as the law directs, all further proceedings will be suspended until the determination of said

Writ of Error by the United States Circuit Court of Appeals for the Ninth Circuit.

Good cause appearing therefor, the above-named defendant, petitioner herein, is allowed five days from this date within which to give said supersedeas bond.

Dated: August 13th, 1917.

WM. C. VAN FLEET,

Judge of the United States District Court.

[Indorsed.] [58]

---

[Title of Court and Cause.]

**Proceedings Had March 6, 1916.**

This case came on regularly for trial in the above-entitled court on Monday, March 6th, 1916, at 10 o'clock A. M., before the Honorable E. S. FARRINGTON, District Judge, Mr. Thomas E. Kepner appearing as attorney for plaintiff, and Mr. Prince A. Hawkins, of Cheney, Downer, Price & Hawkins, appearing as attorney for defendant.

During the formation of the jury, the Judge stated that he was a policy holder in the defendant company, and submitted to counsel the question of his disqualification.

Thereupon counsel consented to complete the jury.

After argument of said matter, it was held that the Judge of this court was disqualified by reason of being a policy-holder in the defendant company.

The jury was accepted, but not sworn, counsel stipulating that the jury should be sworn later, providing counsel be permitted to ask them if anything

had occurred during the recess to create in their minds an opinion touching the merits of the case, or which caused any bias or prejudice for or against either party.

With the usual statutory admonition, the jury is excused, the case continued, and court adjourned until Wednesday, March 8th, 1916, at 10 o'clock A. M. [61]

Wednesday, March 8th, 1916.

Court convened—10 o'clock A. M.

Honorable W. C. VAN FLEET, Presiding.

(All parties present.)

The COURT.—I gather from what counsel has said that the twelve men in the box have been examined as to their general qualifications, and as to their state of mind to sit in this case?

Mr. KEPNER.—Yes, your Honor.

The COURT.—Is there a desire for any further examination at this time?

Mr. KEPNER.—If your Honor please, I would like to ask one or two questions as to anything that may have happened since the jurors were passed on Monday.

The COURT.—Very well.

(After further examination of the jurors on their *voir dire*, counsel for the plaintiff states he is satisfied with the jury.)

(By leave of the Court, counsel for defendant exercises a peremptory challenge to one of the jurors in the box. The jury is then completed and sworn to try the case.

Whereupon the following proceedings are had, and testimony introduced:)

The COURT.—You may proceed, gentlemen.

Mr. KEPNER.—Shall I read the pleadings?

The COURT.—You may make a statement, or take such course as you are advised. It is not absolutely essential to read the pleadings to the jury; you may state what you claim to be the plaintiff's case.

Mr. KEPNER.—If your Honor please, and gentlemen of the jury, this action is entitled Matilda C. Neasham, Plaintiff, versus the New York Life Insurance Company, a Corporation, Defendant. I will not take the time to read the pleadings, but will state the substance of the complaint. The plaintiff alleges that in July, 1914, the defendant company made and delivered its policy of life insurance, numbered 4707986, on the life of her husband, William C. Neasham, wherein and whereby the defendant promised and agreed to pay to the plaintiff the sum of Ten Thousand Dollars upon proof of the death of William C. Neasham, the insured, [62] The insurance policy will be exhibited to you. The plaintiff further alleges that on the 27th day of February, 1915, while the policy by its terms was in force, the insured, William C. Neasham, died. The plaintiff further alleges that on the 15th day of March, 1915, she furnished defendant company with due proof of the death of her husband; and she further alleges that she has performed all the conditions on her part to be performed. She alleges further that the defendant has not paid the policy, or any part of it, and that the full amount of the policy has been due

and unpaid since the date of the furnishing of the proofs of loss to the defendant company.

The COURT.—I think it would be in order, Mr. Kepner, for you to outline briefly to the jury what you expect to prove to maintain your case; you forgot it, perhaps, by stating the pleadings.

Mr. KEPNER.—If your Honor please, the position I take is, in order to maintain and establish the case, is proof of the facts which I have outlined.

The COURT.—Well, perhaps you are right about that. You see, it is not admitted that the deceased died, so your evidence will have to show his death, and that will involve showing the means by which he died.

Mr. KEPNER.—Showing that he died?

The COURT.—Yes.

Mr. KEPNER.—I think, if your Honor please, we are anticipating just a little, perhaps. Under the terms of the policy, death is the only thing we have to prove; and we will prove death. I might state, in order that the jury may understand the form that this controversy will take, that the defendant, as I understand it, will contend that the insured died by his own hand, or by his own act; the plaintiff on her part, will contend as to that point that the insured came to his death at the hands of some person or persons unknown—some person or persons other than the insured. I think, if you Honor please, that is all I care to state at this time.

The COURT.—That is sufficient.

Mr. HAWKINS.—As I understand, your Honor,

I may make my statement when I begin my proof?  
The COURT.—Certainly.

Mr. KEPNER.—I will call Mrs. Neasham. [63]

**Testimony of Mrs. Matilda C. Neasham, in Her Own  
Behalf.**

Mrs. MATILDA C. NEASHAM, the plaintiff, called as a witness, after being sworn, testified as follows:

Direct Examination.

(By Mr. KEPNER.)

Q. You may state your name.

A. Matilda C. Neasham.

Q. Where do you reside, Mrs. Neasham?

A. In Reno.

Q. Whereabouts in Reno?

A. 607 North Virginia Street.

Q. What is your situation in life as to being married?

Mr. HAWKINS.—I will admit that Mrs. Neasham is the widow of William C. Neasham, the insured named in the policy.

Mr. KEPNER.—(Q.) When were you married to William C. Neasham?

A. June 17th, 1901.

Q. And you lived together as husband and wife until the time of his death? A. We did.

Q. When did Mr. Neasham die?

A. The 27th of February, 1915.

Q. That would be the 27th of February last year?

A. Yes.

Q. Of what does your family consist, Mrs. Neasham?



(Testimony of Mrs. Matilda C. Neasham.)

Mr. HAWKINS.—I object to the question as incompetent, irrelevant and immaterial; it does not tend to prove or disprove any issue in the case.

The COURT.—I am inclined to agree with that; it is purely a contract.

Mr. KEPNER.—I don't insist on it.

Q. Look at the document which I hand you, Mrs. Neasham, and state if you ever saw that instrument before, and when? (Hands paper to witness.)

A. This policy was handed to me in the latter part of July, 1914.

Q. How long did it remain in your possession?

A. Until March, 1915.

Q. After the death of your husband? A. Yes.

Q. And then what became of it?

A. I delivered it to you, Mr. Kepner.

Mr. KEPNER.—We offer the policy in evidence, and ask that it be marked Plaintiff's Exhibit "A."

Mr. HAWKINS.—I presume that is the policy you set out as Exhibit "A" in your complaint?

Mr. KEPNER.—It is the original of the policy which is attached to the complaint as Exhibit "A."

[64]

Mr. HAWKINS.—Under the statement of counsel, I have no objection.

(The policy is admitted in evidence, and marked Plaintiff's Exhibit "A.")

Mr. KEPNER.—If your Honor please, I will read the first page of this policy to the jury. There are a large number of conditions appearing on other

(Testimony of Mrs. Matilda C. Neasham.)

pages that I do not deem it essential to read at this time.

Mr. HAWKINS.—I suppose it may be considered as all read, your Honor.

The COURT.—It is all in evidence, and may be read by either party.

(The following is read to the jury by counsel for plaintiff:)

“New York Life Insurance Company by this policy of insurance agrees to pay TEN THOUSAND DOLLARS at the Home Office of the Company in the City and State of New York to Matilda C., wife of the insured, Beneficiary, (with the right on the part of Insured to change the Beneficiary as hereinafter provided) upon receipt at said Home Office of due proof of the death during the continuance of this contract, of William C. Neasham, the insured. This insurance is granted in consideration of the payment of the first premium of Four Hundred fifty-six 90/100 Dollars the receipt of which is hereby acknowledged, constituting payment for the period terminating on the Tenth day of July in the year Nineteen Hundred and fifteen and the payment of a like sum on said date and on the Tenth day of July in every year thereafter during the continuance of this Policy until the death of the Insured.

This policy is free of conditions as to residence, travel, occupation, or military or naval service, and shall be incontestable after one year from its date of issue except for nonpayment of premium. After its delivery to and receipt by the Insured this Policy

(Testimony of Mrs. Matilda C. Neasham.)

takes effect as of the Tenth day of July, Nineteen Hundred and fourteen.

The benefits and provisions printed or written by the Company on the following pages are a part of this contract as fully as if they were recited at length over the signatures hereto affixed.

In Witness Whereof the NEW YORK LIFE INSURANCE COMPANY has caused this contract to be signed this Twenty-third day of July Nineteen Hundred and fourteen.

SEYMOUR M. BALLARD, Secretary.

DARWIN P. KINGSLEY, President. [65]

N. BERGHULZ, Assistant Registrar.

Insurance payable at death: Premiums payable during Life.’’)

Mr. KEPNER.—(Q.) After the death of your husband, as you have stated, I will ask you to state whether you furnished the defendant company with proofs of death?

Mr. HAWKINS.—I submit that would be a conclusion, your Honor. She can state what she did.

The COURT.—Yes, I think you should inquire what she did, whether they were proofs of course would be a conclusion.

Mr. KEPNER.—(Q.) What did you do after the death of your husband, Mrs. Neasham?

A. In regards to this case, this policy?

Q. Yes. A. I furnished proofs of death.

Q. Those proofs were in writing?

Mr. HAWKINS.—Just a minute. I move the answer be stricken.

(Testimony of Mrs. Matilda C. Neasham.)

The COURT.—Yes; the answer was a very natural one, though, in reply to the question. Are not the proofs in writing?

Mr. KEPNER.—Yes, your Honor.

The COURT.—Have they been requested?

Mr. KEPNER.—If in answer to the question she says she furnished proofs in writing, then I will ask the defendant company under our stipulation to produce them, and they will be offered; the question is really a preliminary question.

Mr. HAWKINS.—Counsel asked us to produce them, and I agreed to have them here for his benefit, to be offered in evidence, and I have them, and he may offer them in evidence at this time, if he so desires.

Mr. KEPNER.—Before that is done, in order that the record may be straight, I deem it proper that the question be asked as to whether proofs were furnished.

The COURT.—The proper way would be to hand her these documents, and ask her to state what she did with them, and matters of that kind; then the documents are identified, and may go in evidence; but her answer is a conclusion, because whether these documents do amount to proof of death, as a matter of law, is a legal conclusion to be deduced from their contents, and which, of course, the witness is not competent to state, though the answer was a very natural one for her to give. [66]

Mr. KEPNER.—The proofs, if your Honor please, as presented to me by counsel, are not the

(Testimony of Mrs. Matilda C. Neasham.)

complete proofs which were presented to the company.

Mr. HAWKINS.—I will state we have a written stipulation covering it, and what I have furnished is all counsel asked for, and all that is covered by the written stipulation; it is all I know that was ever furnished the Company.

Mr. KEPNER.—(Q.) Look at these papers I hand you, Mrs. Neasham, numbered one, two and three, and state what they are? (Hands to witness.)

A. This is the original that I signed as the proof of my husband's death.

Q. That is, that was executed by you?

A. Yes; they are somewhat marked up since I last saw them.

Q. And the others?

A. They are about the same in substance.

The COURT.—(Q.) Signed by the physician, or by whom?

A. One by the physician, and the other by attorney—one by C. R. Carter of Reno, one by a physician, and one by myself.

Mr. KEPNER.—(Q.) What is the physician's name? A. Doctor Gibson.

The COURT.—(Q.) It shows on the paper, doesn't it? A. Yes, Doctor Gibson.

Mr. KEPNER.—(Q.) And these papers you have just identified after examining them, what was done with them after they were executed?

A. I delivered them to you.

Q. Do you know whether or not they were deliv-



(Testimony of Mrs. Matilda C. Neasham.)

ered to the defendant company?

The COURT.—Mr. Kepner, is there any question made by them that they received those papers?

Mr. HAWKINS.—We admit we received them.

The COURT.—If it is admitted why not offer them in evidence; those questions are unnecessary.

Mr. KEPNER.—If they admit it, I do offer them in evidence, and ask that they be attached together and marked Plaintiff's Exhibit "B."

(The papers are admitted in evidence and marked Plaintiff's Exhibit "B.") [67]

Mr. KEPNER.—(Q.) After furnishing these proofs, which you have identified, and which have been offered in evidence, did you hear anything from the defendant company? A. Yes.

Q. What was it?

Mr. HAWKINS.—If the Court please, I don't see the purpose of that question; I object to it on the ground it is incompetent, irrelevant and immaterial.

The COURT.—The only question is whether they paid this policy.

WITNESS.—They did not.

Mr. KEPNER.—(Q.) Did you get a letter from them?

A. No, I did not; on the 23d day of April, Judge Cheney and A. P. Rush as I understand the state agent—

Mr. HAWKINS.—Just a minute. I object to that, if the Court please. We admit that we have not paid the policy.

The COURT.—What is the purpose of this?



(Testimony of Mrs. Matilda C. Neasham.)

Mr. KEPNER.—I think it is proper for us to show whether or not any objection was made to the proofs which were submitted.

The COURT.—You can ask the witness that question, whether any objection was made, because that is a fact, whether it was an objection or not.

Mr. KEPNER.—(Q.) Was there any objection ever made, Mrs. Neasham, to the proofs of death as you delivered them to the company?

A. The only objection is, as I stated, in April Judge Cheney and a gentleman, A. P. Rush, I believe, are his initials, called at my residence and offered to deliver to me four hundred and—

Mr. HAWKINS.—Just a minute. I object to that.

The COURT.—Just answer the question whether they ever made any objections to the sufficiency of the proof of death you made, that is all you were asked.

A. Not to my knowledge; not to me, personally.

Q. They have not paid the policy?

A. No, they have not paid the policy.

Mr. KEPNER.—(Q.) They have not made any objection to the proofs? A. No.

Mr. KEPNER.—You may cross-examine. [68]

Mr. HAWKINS.—(Q.) So far as you know, Mrs. Neasham, they never made any objection to the proofs to you? A. No, they did not.

Q. So far as you know? A. No.

Mr. HAWKINS.—No cross-examination.

Mr. KEPNER.—If your Honor please, Mrs. Neas-

(Testimony of Mrs. Matilda C. Neasham.)

ham says she made a mistake of ten years as to when she was married.

The COURT.—Well, she can correct that, if she wishes.

WITNESS.—It should be 1891.

Mr. KEPNER.—Plaintiff rests.

Mr. HAWKINS.—If the Court please, at this time the defendant desires to interpose a motion as follows:

The COURT.—What is the nature of the motion, for a nonsuit or an instructed verdict?

Mr. HAWKINS.—It is in the nature of a motion for an instructed verdict as to the ten thousand dollars, or as a nonsuit. There is in this district some question as to whether the form of motion should be for a nonsuit or for an instructed verdict, and, to avoid any question, we usually make it in both forms; so I desire to make this motion in both forms, as a motion for a nonsuit and for an instructed verdict as to the ten thousand dollar claim.

Comes now the defendant, New York Life Insurance Company, by its attorneys, at the conclusion of all the evidence offered by the plaintiff herein, and moves the Court for a nonsuit, and to direct a verdict for the defendant upon the cause of action asserted in plaintiff's complaint, in so far as plaintiff seeks to recover the sum of ten thousand dollars as the amount of the insurance under said contract, Exhibit "A" to the complaint herein. Said motion is made upon the grounds and for the reasons as follows, to wit:

1. That the cause of action asserted in plaintiff's complaint is founded and based upon a written contract, Exhibit "A" attached to and made a part of the complaint.

2. That it appears from the face of the complaint:

(a) That in event of self-destruction during the first insurance year, whether the insured be sane or insane, the insurance under this policy shall be a sum equal to the premiums thereon which have [69] been paid to and received by the company, and no more.

(b) That the first insurance year under said contract, Exhibit "A" to the complaint, was between the 10th day of July, 1914, and the 10th day of July, 1915.

(c) That the insured, William C. Neasham, during said first insurance year, and on to wit, the 27th day of February, 1915, died.

(d) That by the terms of said contract, Exhibit "A" to the complaint, the amount of the insurance thereunder is fixed and determined by the facts applicable thereto, as therein stated; and the amount plaintiff would be entitled to receive as the amount of insurance under said contract upon the death of the insured, William C. Neasham, depends upon the fact, did or did not the insured, William C. Neasham, destroy or kill himself.

(e) That said insured, William C. Neasham, may have killed or destroyed himself, in which event the insurance under said contract, Exhibit "A" to the complaint, was not ten thousand dollars, but was the

sum of \$456.90, and no more.

3. That plaintiff's pleadings and proof establish, among other things, the following facts, to wit, that the insured, William C. Neasham, came to his death from a gunshot wound; that said gunshot wound was of the head and brain, and that death was instantaneous.

4. That to entitle plaintiff to recover said sum of ten thousand dollars as the amount of the insurance under said contract, Exhibit "A" to the complaint, it must be made to appear as a fact that the insured, William C. Neasham, is dead, and that his death was from some cause by reason of which, under the express terms of the contract, plaintiff is entitled to receive the said ten thousand dollars. That while it is admitted in the pleadings and established by plaintiff's proof, that the insured, William C. Neasham, came to his death from a gunshot wound, there is no proof of any fact from which it can be determined that said insured, William C. Neasham, did not destroy or kill himself.

5. That plaintiff has failed to establish the material fact alleged in paragraph four of the complaint, and denied in paragraph three of the amended answer, that plaintiff furnished defendant with due proof of the death of the insured, William C. Neasham; that the proofs of [70] death offered in evidence by plaintiff do not constitute due proof of death as is required by the contract, Exhibit "A" to the complaint, in that it appears from said proofs of death that the insured came to his death from a gunshot wound of head and brain, and that death was

instantaneous, but it does not appear therefrom whether the insured did or did not destroy himself; and inasmuch as defendant's obligation under the contract, Exhibit "A" to the complaint, in case of self-destruction during the first insurance year was for a sum equal to the premiums thereon paid to and received by the company, and no more, and that the premium was not ten thousand dollars, and does not exceed \$456.90, the extent of defendant's obligation could not be determined from the proofs of death in evidence as proofs of death furnished by plaintiff to the defendant company.

6. That plaintiff has failed upon the trial to prove a sufficient case for the Court and jury, in so far as plaintiff seeks to recover a judgment in the sum of ten thousand dollars as the amount of the insurance, and said amount being one of the sums specified in said contract, Exhibit "A" to the complaint, to be paid to plaintiff as the amount of the insurance upon the establishment of certain facts; but the facts essential to plaintiff's right to recover said sum of ten thousand dollars under said contract, Exhibit "A" to the complaint, as the amount of the insurance, have not been established by plaintiff's evidence.

The COURT.—(After argument on the motion.) The motion will be denied, and you may have an exception.

Mr. HAWKINS.—Very well, your Honor. I ask for an exception for the reasons stated in the motion, and the grounds therefor.

The Court admonishes the jury, and a recess is taken until 2 o'clock P. M.



Wednesday, March 8th, 1916.

AFTER RECESS—2 P. M.

(All parties present.)

The COURT.—Proceed.

(Counsel for defendant makes an opening statement to the jury.)

Mr. HAWKINS.—I will call Mr. Hammersmith.  
[71]

**Testimony of George N. Hammersmith, for  
Defendant.**

Mr. GEORGE N. HAMMERSMITH, called as a witness on behalf of the defendant, after being sworn, testified as follows:

Direct Examination.

(By Mr. HAWKINS.)

Q. Your name is George N. Hammersmith?

A. Yes; George N. Hammersmith.

Q. You live at Sparks, in Washoe County, Mr. Hammersmith?      A. Yes, sir.

Q. Were you acquainted with William C. Neasham, referred to in this suit, during his lifetime?

A. Yes, sir.

Q. How long had you known him?

A. Oh, I suppose about eight or ten years.

Q. It is admitted in the record that Mr. Neasham died, and was killed by some one, either himself or some one else, on February 27, 1915; where were you on that day?      A. In Reno.

Q. Did you or not see Mr. Neasham that day?

A. I did.

Q. Where was he when you saw him?



(Testimony of George N. Hammersmith.)

A. Down near the stock corrals—passing down by the stock corrals.

Q. Stock corrals?      A. Yes.

Q. And where are they located?

A. Just at the east end of the Reno yards.

Q. Along the line of the Southern Pacific Railway Company, extended from Reno to Sparks?

A. No, just in the Reno yard.

Q. What was your business or occupation at that time?      A. Switchman.

Q. What were you doing at this particular time that you saw Mr. Neasham on the day of February 27, 1915?

A. I was standing down in the yard waiting for number six to go by.

Q. What time of day was it?

A. Between eight-fifteen and eight-forty-five.

Q. In the morning?

A. In the morning, yes, sir.

Q. What time is number six due to pull out from Reno, going east?      A. Eight-thirty.

Q. How far, approximately, were you from Mr. Neasham on Saturday morning, the 27th of February, between eight-fifteen and eighty-fourty-five o'clock?

A. Well, just about as far as from here to the edge of the street. [72]

Q. He was going in what direction?

A. Going east.

Q. Was he alone or with any one?      A. Alone.

Q. Going east would be towards Sparks?

(Testimony of George N. Hammersmith.)

A. Towards Sparks; yes, sir.

Q. And about how far from the depot in Reno was Mr. Neasham at this particular time when you saw him walking along, going east?

A. Well, I can't judge the distance from the depot to the stock corrals but it must be about pretty near two blocks; that is, from the depot to where the stock-corrals are situated, it is about two blocks.

Q. Do you mean two railroad blocks?

A. No, two blocks.

The COURT.—Two city blocks?

A. Two city blocks, yes, from the depot to the stock-yards, just about two city blocks; that is from the passenger depot at Reno to the stock-corrals.

Mr. HAWKINS.—(Q.) About two city blocks?

A. About two city blocks.

Q. And it was along there that you saw Mr. Neasham? A. There where he passed.

Mr. HAWKINS.—That is all.

#### Cross-examination.

Mr. KEPNER.—(Q.) How long did you say you had known Mr. Neasham?

A. About eight or ten years.

Q. Did you speak to him on this occasion?

A. No, there was nobody spoke to him.

Q. Did you speak to him?

A. Not that I remember of.

Q. Are you positive about the time of day that you saw him?

A. No, I could not be positive about the time of day; I was down there at the east end of the yard

(Testimony of George N. Hammersmith.)

waiting for number six to go by when he passed; it was somewhere between eight-fifteen and eight-forty-five—I was waiting for number six to go by.

Q. Do you know whether or not number six was on time that morning?

A. Yes, number six was on time.

Q. If number six was on time that morning, and left on time, number six left at eighty-twenty-six, didn't it?

A. I don't know I am sure; I could not state, it is so long ago. [73]

Q. On the morning of February 27, it left the Reno depot at eight-twenty-six A. M.

A. I don't know what time she left, I could not say.

Q. If it be a fact that number six left the Reno depot that morning at or about eight-thirty, and if it be a fact you were waiting for number six, and you saw Mr. Neasham during that time while you were waiting for number six, you saw him before eight-thirty?

A. I saw him between eight-thirty and eight-forty-five, I don't know just what time it was.

The COURT.—(Q.) What he is asking you is this: You said you saw him at the place you have indicated between eight-thirty and eight-forty-five?

A. Eight-fifteen and eight-forty-five, but I don't know exactly what time it was.

The COURT.—Eight-fifteen and eight-forty-five; then it might be before eight-thirty, if number six did leave Reno at eight-twenty-six?

Mr. KEPNER.—Yes. (Q.) If number six left

(Testimony of George N. Hammersmith.)

Reno on time, and you were waiting for number six when Mr. Neasham passed the point where you were waiting, he would have passed that point where you were waiting before eight-thirty?

A. No, I could not say whether it was before eight-thirty, or after.

The COURT.—It is a mere matter of figures; the witness can state the time.

A. I can't state the time that he passed there.

Mr. KEPNER.—(Q.) You didn't see anyone with him?

A. No, sir, I didn't see anybody with him at all.

Q. And you didn't speak to him?

A. No, sir, I didn't speak to him at all; there was nobody spoke to him.

Q. You always did speak when you met, did you?

A. Yes.

Q. Nevertheless, on this occasion you didn't speak?

A.No, he was too far away; I was sitting on the side there, and I didn't see anything of him to speak to him.

Q. You didn't see him again that day? A. No.

Mr. KEPNER.—That is all. [74]

**Testimony of F. K. Unsworth, for Defendant.**

Mr. F. K. UNSWORTH, called as a witness on behalf of the defendant, after being sworn, testified as follows:

Direct Examination.

(By Mr. HAWKINS.)

Q. Mr. Unsworth, you live in Reno, Nevada?

(Testimony of F. K. Unsworth.)

A. I do.

Q. You are Justice of the Peace and *ex-officio* Coroner of that precinct are you?

A. Of Reno Township, Washoe County, Nevada.

Q. And you held such positions on February 27, 1915?     A. I did.

Q. On that date you received information concerning a party who had been shot at a point east of Reno, did you?     A. I did.

Q. You repaired to the place where the party was shot, did you?     A. I did.

Q. Who did you find there at that place?

A. I found the body of W. C. Neasham.

Q. Where was that, Mr. Unsworth?

A. It was at a point about three-quarters of a mile west of the Asylum crossing, on the Southern Pacific right of way, between Reno and Sparks.

Q. That was between Reno and Sparks?

A. It was.

Q. Along the line of the Southern Pacific Railroad right of way?     A. It is.

Q. About how far was this point where you found the body of Mr. Neasham east of Reno?

A. From the depot at Reno, I should estimate it at about two and a half or two and three-quarter miles east of Reno.

Q. How far was the body away from the right of way of the Southern Pacific Railroad track?

A. It was about sixteen feet to the south of the Southern Pacific track, in a little hollow or pit, parallel with the Southern Pacific track.

(Testimony of F. K. Unsworth.)

The COURT.—(Q.) Southern Pacific main line?

A. Main line.

Mr. HAWKINS.—(Q.) Travelling easterly along the Southern Pacific Railroad at that point, on which side of the track was the body?

A. On the right-hand side.

Q. Right-hand side going east; and you say it was about sixteen feet off, down in a cut or pit?

A. It was.

Q. What was the nature of the ground in that cut or pit where you found [75] the body, as to being soft or hard?

A. The ground was soft; that is, the condition of the ground itself was soft from moisture.

The COURT.—(Q.) What do you mean by a pit, what sort of a pit? A. A sort of a dug-out.

Mr. HAWKINS.—(Q.) Will you explain the surroundings there a little more fully, Mr. Unsworth, as to the nature of that pit; what was the character of the soil in there?

A. The soil itself was a sand and fine gravel, which was damp.

Q. Sand and fine gravel, and was damp?

A. Yes.

Q. Was there a wagon way through it?

A. There was.

The COURT.—(Q.) There was a wagon way running through this pit? A. Yes.

Q. Was the body found by the wagon way or on it?

A. The body was partly in the bottom of the pit and partly to the side.



(Testimony of F. K. Unsworth.)

Q. Partly to the side of what?

A. Of the pit or dug-out.

Q. On the wagon way, was it?

A. The feet rested toward the wagon way, and the rest of the body was in a reclining position on the bank, or slope of the pit.

Mr. HAWKINS.—(Q.) About how wide was this pit, Mr. Unsworth, at the place where you found the body?

A. I should judge it to be eighteen or twenty feet across.

Q. And about how deep were these sloping banks coming down to the bottom?

A. From twelve to sixteen feet.

Q. You say the bottom of this pit was sandy, and of gravel, and it was damp? A. It was.

Q. Who, if any one, went with you when you went to this point after being notified of the event to which you have testified?

A. C. P. Ferrell, Sheriff of Washoe County, and Mr. Frank Chick, a member of the Perkins-Gulling Undertaking Company.

Q. That is F. O. Chick? A. F. O. Chick.

Q. When you arrived at the point where the body was, did you approach the body at that time immediately? A. I did not.

Q. Who in your party, if anyone, did?

A. The sheriff, Mr. Ferrell.

The COURT.—(Q.) Was there snow on the ground? A. No, there was not. [76]

Mr. HAWKINS.—(Q.) After the sheriff had ap-

(Testimony of F. K. Unsworth.)

proached the body, did you thereafter approach to the body?     A. I did.

Q. Had the body been moved in any way from the time you got there until you approached close to it?

A. It had not.

Q. Will you state the condition or position of the body at that time?     A. As I stated before—

The COURT.—In what respect do you mean? You don't want him to repeat things that he has already said; he has already described how the body lay. I would not have mere repetitions, because it does not add anything.

Mr. HAWKINS.—(Q.) What position were the hands of the deceased when you approached the body?

WITNESS.—If I might be permitted to explain a little more fully as to the position of the body, Judge.

The COURT.—Yes, go ahead.

A. The body was facing west, in a reclining position; the deceased was lying on his right side, with one arm underneath, and the other one across his chest.

Mr. HAWKINS.—(Q.) Did you observe when you first approached, whether or not there was a pistol or gun near the deceased?     A. I did.

Q. Was there or was there not a pistol there?

A. There was.

Q. Where was it?

A. The pistol was on the ground, about four inches below the right hand of the deceased.

(Testimony of F. K. Unsworth.)

Q. Did you or not observe the condition of the deceased's clothing at that time, as to whether or not it was in order or disarranged?     A. I did.

Q. And what was the condition in that regard?

A. They seemed to be in order.

Mr. KEPNER.—(Q.) What is that?

A. They seemed to be in order.

Mr. KEPNER.—I move that be stricken out as not responsive. The witness can state the fact, but cannot state what seemed to be the fact.

The COURT.—Well, I am not inclined to agree with you, because what we understand by the term “in order” with reference to wearing apparel—was it in accordance with the usual manner of wearing it, or had [77] it been disturbed, or in anywise, I suppose, torn, or otherwise disarranged. Is that what you mean, that it did not appear to have been disturbed?

WITNESS.—To have been disarranged or disturbed.

Q. Did not appear to be?     A. Did not.

Q. What clothing did he have on?

A. He had on—from external view?

Q. Yes, that is what I mean—outer clothing I mean.

A. A shirt, collar, tie, vest, trousers and coat.

Q. The usual outer wearing apparel?     A. Yes.

Mr. HAWKINS.—(Q.) I understand it did not appear to have been disarranged in any manner?

A. It did not.

Q. Did you observe the ground around where the

(Testimony of F. K. Unsworth.)

body lay, to see whether or not there was any evidence of any struggle, or other persons being near the body? A. I did.

Mr. KEPNER.—If your Honor please, I think I will object to that. I have no objection to the witness stating what he observed, but I object to his expressing any opinion from what he saw.

The COURT.—The proper thing is to ask him what the appearances of the ground were as to evidence of any others having been present, and let the jury draw the inference as to whether there had been a struggle. If there was any evidence of the ground being torn up, or tracks of others near, or anything of that kind, that can be stated, and the jury will draw the inference that the witness has undertaken to state.

Mr. HAWKINS.—(Q.) State, Mr. Unsworth, whether there were any evidences of other persons having approached to the body.

Mr. KEPNER.—I will object to it.

The COURT.—Objection sustained. That calls for his conclusion; that is for the jury to draw.

Mr. HAWKINS.—(Q.) State the condition of the ground, as to what appeared thereon, if anything, with reference to persons having approached the body.

Mr. KEPNER.—Same objection.

The COURT.—What counsel wants you to state, Mr. Unsworth, is the condition of the ground in the vicinity of the body, indicating whether [78] or no others had been present before you got there,

(Testimony of F. K. Unsworth.)

tracks, or anything of that kind, human tracks.

WITNESS.—Am I permitted at this time to testify to that, your Honor?

The COURT.—Yes.

A. I saw no other tracks or foot-prints in the immediate vicinity where the body lay; the only foot-tracks were the foot-tracks of one person, that led to where the body lay.

Mr. HAWKINS.—(Q.) Did you examine the effects that were on the body? A. At that time?

Q. Yes.

A. I did, with the exception of one article.

Q. What did you find upon the body?

A. I found on the body or with the body, money to the value of two dollars and a half; one Parker fountain pen, one pocket comb and case; one gold watch, which had a label of R. Herz thereon; a chain and charm; one pocket knife; one purse; one Savage automatic revolver, caliber thirty-two, number 54589 (R).

The COURT.—(Q.) You are speaking of a revolver now on the person, besides the one near the hand?

A. No, your Honor, I said I found on the body or with the body.

Q. He is asking you now solely with reference to the effects you found on the body?

A. You may strike that Savage automatic revolver.

Q. You didn't find any revolver on the body?

A. No, I did not, your Honor. Books, papers, let-

(Testimony of F. K. Unsworth.)

ters, one lead pencil, and stick-pin.

Mr. HAWKINS.—I want to go back just a minute, your Honor.

Q. The ground in the vicinity of the body, you have testified to its condition, did it or not show the tracks that were around there distinctly or clearly, or not?

Mr. KEPNER.—Object to that as calling for the conclusion of the witness, and also because it has already been answered.

The COURT.—Well, he has answered about the character of the soil, and its state as to being damp; the jury is to draw these inferences.

Mr. HAWKINS.—If the Court please, may I just observe this: Sand might be damp, and it might show the tracks, and another kind might be quite different; the object of this question is to find out from this [79] witness as a fact, whether a track made there, a person stepping would clearly leave a track.

The COURT.—Leave a clear impression?

Mr. HAWKINS.—Yes.

The COURT.—Well, I will let him answer that.

WITNESS.—What is the question?

(The reporter reads the question.)

A. The ground showed the tracks distinctly and clearly.

Mr. HAWKINS.—(Q.) Will you describe the pistol which you said a moment ago you found within three or four inches of the hand of the deceased?

A. The pistol was a Savage automatic revolver, caliber thirty-two, number 54589 (R).



(Testimony of F. K. Unsworth.)

Q. While you were there did you or not observe in the immediate vicinity of the body an empty cartridge shell? A. I did.

Mr. KEPNER.—That is objected to as leading.

The COURT.—Yes, it is; don't put anything in your witness' mouth; ask him what he found there; and strike that out.

Mr. HAWKINS.—I withdraw the question. (Q.) What did you find in the immediate vicinity of the body in reference to a shell?

Mr. KEPNER.—That is leading.

The COURT.—It is objectionable as suggestive. Ask him what he found. Depend on your witness to tell what he found; don't suggest it to him, he is a bright witness.

Mr. HAWKINS.—(Q.) What did you find there beside the body, other than the pistol which you have mentioned?

A. I found one empty cartridge shell.

Q. What was the size of it?

A. Thirty-two caliber.

Q. Did you take it or not? A. I did.

Q. What did you finally do with it?

A. I turned it over to the County Treasurer of Washoe County, together with the other articles.

Q. What finally became of this revolver which you have mentioned, if you know?

A. I do not, except that it was turned over to the County Treasurer of Washoe County.

Q. By whom? A. By myself as coroner. [80]

Q. When you approached the body what did you

(Testimony of F. K. Unsworth.)

see in reference to the physical condition of the body, other than what you have testified to, if anything?

A. The body showed no signs of external violence with the exception of—

Mr. KEPNER.—If your Honor please, I move that be stricken out as the expression of the witness.

The COURT.—That may go out.

WITNESS.—I found blood oozing from the mouth and nose of the deceased.

Mr. HAWKINS.—(Q.) Did you or not find any blood at any other portion of the body?

A. I did not.

Q. Were there or not any other wounds upon the body?      A. I found no other.

Mr. KEPNER.—What was the answer?

A. I found no other.

Mr. HAWKINS.—(Q.) Did you examine the body at that time to see what caused this blood in the nose and mouth?      A. I did not.

Q. Do you know what caused it?

Mr. KEPNER.—If he knows of his own knowledge, I have no objection to his stating it.

WITNESS.—I was just going to suggest, Mr. Kepner, that I know simply from the knowledge of the physician that performed the autopsy.

Mr. KEPNER.—I didn't hear what he said.

The COURT.—He only knows, he says, from the statement of the physician who performed the autopsy.

Mr. KEPNER.—I object to his stating anything about it then.

(Testimony of F. K. Unsworth.)

Mr. HAWKINS.—He has not stated. (Q.)  
What became of the body?

A. The body was removed to the parlors of the Perkins-Gulling Undertaking Company.

Q. By whom?

A. By the Perkins-Gulling Company, under my direction.

Q. Mr. F. O. Chick, the man you mentioned a while ago, who did he represent?

A. He represented the Perkins-Gulling Company.

Q. State whether or not the body was removed by him under your directions, to the Perkins-Gulling Undertaking Company parlors.

A. It was, with the assistance of another member of the firm, Mr. S. [81] E. Ross.

Q. Did you see the body after it was removed to Reno? A. I did.

Q. Did you examine it afterwards, with a view of ascertaining where the gunshot wound was?

The COURT.—He has not testified to any gunshot wound.

Mr. HAWKINS.—It has been admitted in the pleadings that he came to his death by a gunshot wound.

Mr. KEPNER.—The witness said that he didn't know, except what he had been told by somebody else.

The COURT.—Well, there is no objection to asking if he examined it afterwards to ascertain what wounds, if any, were on the body. The fact it has been admitted would not necessarily imply that this

(Testimony of F. K. Unsworth.)

witness would know a gunshot wound when he saw it.

Mr. HAWKINS.—(Q.) Did you examine the body afterwards with a view of ascertaining what wounds had been received?

A. I viewed the remains at the morgue, and saw a wound in the mouth, the upper portion of the mouth, up into the skull.

Q. Was there any other wound on the deceased at that time that you saw? A. I didn't see any other.

Mr. HAWKINS.—That is all.

Cross-examination.

Mr. KEPNER.—(Q.) This pistol that was on the ground, did I understand you to say that Mr. Ferrell picked that pistol up? A. He did.

Q. Did you have it in your possession at all prior to the inquest, which was held on the first of March?

Mr. HAWKINS.—I object to the question as injecting into the case the question of an inquest, as incompetent, irrelevant and immaterial.

The COURT.—The witness has not testified to any inquest.

Mr. KEPNER.—But he has testified that the sheriff took possession of the gun.

The COURT.—You are at perfect liberty to ask him if he had it in his possession, or at any subsequent time, but refrain from referring to a fact that he has not testified to.

Mr. KEPNER.—I understand, your Honor. (Q.) When did you first take possession of the pistol? [82]

(Testimony of F. K. Unsworth.)

A. On the first day of March, 1915.

The COURT.—(Q.) You didn't take the pistol when you found the body?

A. I did not, your Honor.

Mr. KEPNER.—(Q.) Had the pistol been in your possession at all from the time the sheriff took possession of it at the gravel-pit, as you have stated, up to the time it was delivered to you on the first of March?

A. Simply to look at it, and then I handed it back to the sheriff, and told him to keep it until such time as I should call for it.

Q. When was that?

A. That was on the first day of March, 1915.

Q. Now, you say you picked up a shell near the body; what became of the shell?

A. I turned it over to the county treasurer.

Q. You turned the shell over to the county treasurer?     A. I did.

Q. Then the shell was in your possession from the time you picked it up at the gravel-pit until you turned it over to the county treasurer?     A. No.

Q. Whose possession was it in?

A. The sheriff's.

Q. How long did you keep it after you picked it up?

A. Just a moment or two.

Q. And you handed it to the sheriff?     A. I did.

Q. And so far as you know, the sheriff kept possession of the pistol and the shell until the first of March?     A. As far as I know.

The COURT.—(Q.) How do you know it was the

(Testimony of F. K. Unsworth.)

same shell that was handed back to you?

A. I didn't know that it was the same shell further than that it is the same caliber.

Q. You just took the sheriff's representation about that?

A. I directed him to keep it in his custody until I should call for it.

Mr. KEPNER.—(Q.) How recently have you seen this pistol?

A. I think I have seen it within a day of two.

Q. When did you see it last?

A. That is the time, within a day of two; I don't remember whether it was yesterday or the day before.

Q. Yesterday or the day before. When did you make your memorandum as to the number of the pistol?

A. That memorandum was made by the treasurer in my presence at the time the articles were turned over to him. [83]

Q. When was that?

A. It was either the 2d or 3d of March, I believe the 3d.

Q. 2d or 3d of March last year? A. 1915.

The COURT.—(Q.) You saw a pistol, you say, lying near the body? A. I did.

Q. The sheriff took that, did he?

A. He did, and handed it to me; I viewed it, and then—

Q. Handed it back to him. Are you able to testify that the pistol you subsequently received from the sheriff was the same pistol?



(Testimony of F. K. Unsworth.)

A. I am, by the number.

Q. But you had not seen the number before he handed it back to you?     A. I had not what?

Q. You did not testify that you had seen the number before he handed it back to you?

A. I had examined the pistol; I didn't testify that I had seen the number, or anything.

Q. You can't testify by the number that you had seen it before it came back to you from the sheriff?

A. I wasn't asked whether or not I had seen it.

Q. Well, had you, I am asking you?

A. Yes, I had seen the number on the pistol, but I hadn't taken any note of it at that time.

Q. Are you able to recall that it was the same number as you gave it to the treasurer, or when the treasurer took it, as it was that you saw at the time by the body?     A. Yes.

Mr. KEPNER.—(Q.) How do you know it is the same pistol and the same number?     A. As what?

Q. The pistol you picked up on the ground is the same pistol which you saw in the sheriff's possession—the same pistol you delivered to the sheriff, and saw in the sheriff's possession; how do you know it is the same pistol?

A. By remembering the number on it.

The COURT.—(Q.) Will you let me see the memorandum you made of the number?

(Witness hands memorandum to Court.)

A. I have since made this memorandum.

Q. Oh, you didn't make this at that time? [84]

A. No, that is taken from the coroner's inquest.

(Testimony of F. K. Unsworth.)

Q. Were you able to carry in your memory the figures 54589(R)? A. For two days, yes.

Q. I am not asking about the length of time, I am asking— A. That was the length of time, yes.

Mr. KEPNER.—(Q.) Now, I don't want to confuse Mr. Unsworth; I understood you to say when I first commenced my examination that you didn't have possession of this pistol until the first of March; I understood you to tell the Court that you had the pistol in your possession for a brief moment at the gravel-pit? A. That is the testimony.

Q. Which is right, are both statements right?

A. Both.

Q. When did you first charge your memory with the number of this pistol?

A. When I was upon the ground; the sheriff and myself and Mr. Chick all remarked about the pistol, and examined it at that time.

Q. And ever since that time you have known the number of this pistol?

A. No, I didn't attempt to remember it after the inquest.

Q. Was the number of this pistol mentioned at the inquest?

A. That I can't remember, the testimony, the record will tell you.

Q. If it was mentioned it is in the record of the proceedings, is it? A. If it was what?

Q. If the number of that pistol was mentioned at the inquest, the number appears in the record of the proceedings?

(Testimony of F. K. Unsworth.)

Mr. HAWKINS.—I object to the question on the ground it is not proper cross-examination.

The COURT.—Oh, yes, it is proper cross-examination.

Q. You held the inquest, didn't you?     A. I did.

Q. He is asking you if the number was mentioned at that inquest, it will be found in that record?

A. Not necessarily.

Q. Why not?

A. I might have discussed it with the sheriff before the hearing itself; it would not necessarily appear in the record.

Q. If the witness testified to it, wouldn't it appear in the record?

A. It might and might not; I don't remember what his testimony was.

Q. Don't you have it taken down in shorthand, the testimony at the coroner's inquest?     A. I do.

Q. If it was mentioned by the witness, it would very likely be found [85] there?

A. Yes, if it was mentioned by a witness at that hearing; or we might have discussed it before the hearing itself.

Q. It is not a question of what you might have done; what we want for this jury is what did occur, not what might have happened; it is an important question.     A. I cannot at this time state.

Q. Human memory is fallible, of course. I understood you to say you recognized this as the same pistol because you could remember the number.

A. That is true, your Honor, but what I am at-

(Testimony of F. K. Unsworth.)

tempting to state at this time is that I don't know whether that number was brought out at the hearing itself, or whether when I talked the matter over with the sheriff before the hearing, that I recall it to memory; it would not necessarily appear in the record.

Q. Unless it was in the evidence of some witness?

A. Yes.

Mr. KEPNER.—I think that is all, if you Honor please.

Mr. HAWKINS.—(Q.) I understand you to say you remember the number from your examination on the ground, and that the gun you turned over to the treasurer is the same gun?

A. That is my testimony.

Mr. HAWKINS.—That is all.

### **Testimony of Frank Collins, for Defendant.**

Mr. FRANK COLLINS, called as a witness on behalf of the defendant, after being sworn, testified as follows:

#### **Direct Examination.**

(By Mr. HAWKINS.)

Q. Mr. Collins, you live in Reno? A. Yes, sir.

Q. How long have you lived in Reno?

A. About twenty years.

Q. What business are you engaged in?

A. The jewelry business, and loan office.

Q. How long have you been so engaged?

A. Two years.

Q. Were you or not so engaged on February 26, 1915? A. I was.

(Testimony of Frank Collins.)

Q. And prior thereto, and since?

A. Yes, sir.

Q. It is admitted in the record that William C. Neasham came to his death from a gunshot wound—

Mr. KEPNER.—I object to a statement of that fact.

The COURT.—Yes; just ask your question.

Mr. HAWKINS.—It is simply a matter of fixing the date. [86]

The COURT.—The witness must give you his dates.

Mr. HAWKINS.—(Q.) Do you remember the time when Mr. Neasham was discovered shot, out east of Reno?

WITNESS.—Please read the question.

The COURT.—Do you remember the occasion when Mr. Neasham was found shot, out east of Reno?

A. Yes, sir.

Mr. HAWKINS.—(Q.) Did you know Mr. Neasham in his lifetime?

A. Well, I wasn't personally acquainted with him; I knew who he was.

Q. Did you ever have any business transaction with him prior to his death? A. The day before.

Q. What time the day before?

A. About six o'clock in the evening.

Q. What was the nature of that?

A. I sold him a pistol.

Q. What kind of a pistol did you sell him?

A. Thirty-two Savage automatic.

Q. What did he pay you for it?

(Testimony of Frank Collins.)

A. Ten dollars.

Q. What did he say to you in reference to purchasing a pistol from you, if anything—state the conversation which you had at the time?

A. Well, he came in to buy the pistol, and I showed it to him, and he asked me to show him how to load it, and how it worked, which I did, and I told him I didn't have enough shells to fill it, and he said there would be plenty.

Q. How many shells did you put in it?

A. Nine.

Q. How many would the magazine hold?

A. Nine in the magazine and one in the cylinder.

Q. Did you say that was an automatic or not?

A. Yes, sir.

Q. Can you identify the gun which you sold Mr. Neasham the day before he was shot?

A. Yes, sir.

Mr. HAWKINS.—I will state, your Honor, that Mr. Hill, the county treasurer, is supposed to be here on the train this afternoon, with that pistol.

The COURT.—(Q.) You say it was about six o'clock in the evening?      A. Yes, sir.

Q. Of the day before?      A. Yes, sir.

The COURT.—If the train has not come in, go ahead with something else.

Mr. HAWKINS.—We will want to recall this witness after the gun [87] comes.

The COURT.—Are you through with the examination other than that?

Mr. HAWKINS.—I think so.



(Testimony of Frank Collins.)

The COURT.—Then he can be cross-examined as far as his testimony goes, and you can recall him.

Mr. KEPNER.—I prefer not to commence the cross-examination until the direct is finished.

The COURT.—That is agreeable. Is that all of the witnesses then for the present?

Mr. HAWKINS.—Just a minute, if your Honor please.

Q. Did you see Mr. Neasham after his death?

A. Yes, sir.

Q. Where?

A. At Perkins and Gulling's morgue.

Q. Was that the same party to whom you sold the gun the day before?      A. Yes, sir.

Q. Did or not any one from the Chief of Police office come to see you shortly after Mr. Neasham's death, and make inquiries about the gun?

A. Yes, Thornton Read.

Q. Who?

A. Thornton Read, the lieutenant.

Q. In the conversation with Mr. Neasham when he was purchasing the gun, was anything said about additional cartridges?

A. He said that was plenty; I told him there was one short, and he said that was plenty.

The COURT.—he has gone over that once before.

Mr. HAWKINS.—That is all, with the exception of identifying the gun.

Mr. KEPNER.—I prefer not to cross-examine until the gun is produced.

The COURT.—You may step aside then, Mr. Collins.

Mr. HAWKINS.—Now, if the Court please, by stipulation of counsel we have some testimony which we have agreed may be read into the record, and have the same force and effect as if the witnesses were present, and so testified. I suppose I might file that stipulation as part of the record.

Mr. KEPNER.—There is no dispute about the stipulation, if the Court please. The effect of the stipulation is that the testimony of these witnesses before the coroner's jury may be read here with the same effect as though they appeared here. [88]

The COURT.—Just as a deposition.

Mr. HAWKINS.—I will now read the deposition and testimony of Edward Lalonde. (Reads:)

“EDWARD LALONDE, being first duly sworn, deposes and says:

“By the CORONER.—(Q.) Just state your name.

“A. Edward Lalonde.

“Q. State what you know about the circumstances of the finding of the body.

“A. I came from Sparks Saturday morning, and I came along the track, and I noticed a man laying there; he was below the railroad track, and when I got closer to him I heard him snoring very heavily, so I stopped to look. I thought there was something wrong with the man who laid there very still, so I stood around a few minutes, and two men came up, and I called their attention to it; they ran over, and we stood and looked down. I stepped around a little,

and I saw the gun. So I mentioned that we would have to give word to somebody, and there was two of us went down within six feet of him, and looked at him six feet distant, so then we went right away to Coney Island, and went in a private house over there, and telephoned. We waited awhile, and then we walked over to where the man was laying, and we still waited for the sheriff to come, and the man was dead then.

“By Mr. KEPNER.—(Q.) Did you know Mr. Neasham?     A. No.

“Q. Where do you live?     A. Sparks.

“Q. You have lived in this county some?

“A. I have been in Nevada considerable; I go away a good deal of the time.

“Q. What time in the morning was it?

“A. Ten o'clock.

“Q. When you discovered the body, did you notice anybody in the vicinity?

“A. No; not closer than 150 yards.

“Q. Who was it, these two men that you met?

“A. Yes.

“Q. From the east end of the railroad track?

“A. Yes.

“Q. Did you know either of these parties before?

“A. I was acquainted with Mr. Brown.

“Q. By that time they had come up, and were already opposite the body?     A. Yes.

“Q. You say you went down there about six feet?

“A. Yes. [89]

“Q. Did you notice anything unusual about the

appearance of the body?

“A. Yes, there was blood on the mouth, and some blood on the coat.

“Q. Describe how he was lying.

“A. He lay on his right side; his feet were close together, and one hand was up off the ground like that (indicating), and one hand was on his body (indicates on his abdomen), that way.

“Q. Did you notice the revolver that time?

“A. It was very close to the body on the ground.

“Q. At the time that you came up opposite to him on the track, you say that you could hear him breathing?      A. Yes.

“Q. You never got closer to the body on that day than six feet until the sheriff came out?      A. No.

“Q. Then you went down to the body with the sheriff?      A. Yes.

“Q. What is your occupation?

“A. I am a sheep shearer.

“CORONER.—(Q.) You didn’t hear the report from the gun before you—      A. No.”

Mr. HAWKINS.—That is all of Mr. Lalonde’s testimony.

The COURT.—Wasn’t he asked anything about where he came from, or at that time how far away he might have been? He testifies that the deceased was breathing when he got there, or snoring, as he expressed it.

Mr. HAWKINS.—I have read all of his testimony.

The COURT.—The doctor testifies that he died

instantaneously; what I had in mind was, I should think it would have suggested itself to those who were making this examination to ask him where he came from when he come up to the body, because under the circumstances, it might well be that he would necessarily have heard a shot.

Mr. HAWKINS.—Well, you see there wasn't anybody at this inquest.

The COURT.—There were no interested parties at the inquest, just an official inquiry by the coroner alone?

Mr. HAWKINS.—An official inquiry by the coroner, and the distict attorney's office represented; and Mr. Kepner, as shown.

I will read the testimony of Charles Brown.  
(Reads:)

“CHARLES BROWN, being first duly sworn, deposes and says:

“By the CORONER.—(Q.) Your name is Charles Brown?     A. Yes, sir.

“Q. Were you present alongside the railroad track when the sheriff and '[90] the coroner and Mr. Chick”—or Frick, it is written here—“arrived to view Mr. Neasham's remains?     A. Yes, sir.

“Q. Were you one of the gentlemen that first discovered Mr. Neasham's body lying there?

“A. Yes, sir.

“Q. Just tell the jury what you did after discovering the man lying there.

“A. We went and phoned to the police.

“Q. How many of you were there?

“A. There was three and a man named Mr. Rudolph, and Mr. Huntsman”—it is written here.

“Q. Just go on.

“A. We went and phoned to the police, and we sent word, and we got them to come up and identify it and look after it.

“Mr. SALISBURY.—Where did you phone from?

“A. From Coney Island.

“Q. What time in the day was it that you discovered the body?

“A. I don’t know, it must have been somewhere along about ten o’clock, somewhere along there. I don’t know exactly.

“Q. Whereabouts do you live?

“A. I am stopping here in Reno at the Clarendon.

“Q. Which direction were you going when you found Mr. Neasham?

“A. We was walking down toward Sparks.

“Q. Going any place in particular? A. No.

“Q. And the other two gentlemen started with you?

“A. The young man started with me, and the other man I met him right there.

“CORONER.—(Q.) In which direction was the other gentleman whom you met going?

“A. We met there.

“Q. Oh, the three of you met there?

“A. Met right there.

“Q. Who discovered the body first?

“A. Mr. Lalonde.



“Q. Did the three of you, or any of you, go down to the body?

“A. No, we didn’t go down to the body, we just went to the bank and looked over, and this young man was with me. He walked down to the edge of the bank, and he said he thought he seen a revolver there.

“Q. How close to the body did he go?

“A. Probably about thirty feet.

“Q. That is closer than you went?

“A. Yes; he said, ‘I guess the man shot himself; let’s go and get somebody to look after him.’ ”

Mr. KEPNER.—I move that be stricken out; it is a mere expression of opinion. [91]

The COURT.—Well, of course, it is purely an expression of opinion, but under the stipulation that this evidence be read, I don’t see how I can strike it out. Of course, the jury will understand it is purely an expression of opinion.

(Mr. Hawkins continues the reading of the testimony:)

“Q. Mr. Lalonde first called your attention to the body?     A. Yes, sir.

“Q. Which one of the three was it that was there when you got there?

“A. Mr. Lalonde. He was going that way and we was going east. Just as we went over to look down we discovered that he had shot himself.

“Q. You didn’t see anyone else in the neighborhood except the other two gentlemen who were with you?     A. No, that is all.

“Q. Any of you gentlemen wish to ask any further questions?

“JUROR.—No.”

Mr. HAWKINS.—That is the testimony of Mr. Brown.

The COURT.—Was there no evidence tending to identify who these men were, and where they came from?

Mr. HAWKINS.—Nothing at all; I am reading everything that is here.

The COURT.—I supposed you were, but it is rather a singular thing that it should not have been inquired into by the coroner, where a violent death had occurred.

Mr. HAWKINS.—Evidently they did not think it was necessary to make any further inquiries.

Mr. UNSWORTH.—I will state to your Honor—

Mr. KEPNER.—I object to any statements being made to the Court by the Coroner.

The COURT.—Well, Mr. Unsworth, of course you are not on the stand now, but I don't see any objection to letting the coroner state why he did not make any further inquiry.

Mr. KEPNER.—I object to it, if the Court please?

The COURT.—Very well.

Mr. HAWKINS.—The next is the testimony of Clyde Rudolph. (Reads:)

“CLYDE RUDOLPH, being first duly sworn, deposes and says:

“By the CORONER.—(Q.) Mr. Rudolph, were you with Mr. Brown on Saturday morning?

“A. Yes, sir.

“Q. State whether or not you with Mr. Brown and another gentleman by [92] the name of Lalonde, discovered Mr. Neasham lying in the ditch bed? A. Yes, sir.

“Q. Did you summon the others immediately?

“A. Yes, we went up the track, and he was lying in the ditch, and the other gentleman stayed up, and I went down seven or eight feet. I could see he had shot himself, and I went over and telephoned to the police. That was the best thing—about that time; we waited around there, and the sheriff came in an automobile.

“Q. Whereabouts do you reside?

“A. At the Clarendon Hotel.

“Q. You had started from there that morning?

“A. Yes, we were just taking a walk up, and had a conversation. Mr. Brown knows him, and we finally got talking with him.

“Q. Whereabouts did he join you?

“A. I don't know the places here. We was looking down at the man, and we heard him breathing very heavily.

“Q. You could hear him breathing? A. Yes.

“Q. How far away?

“A. Twelve or fifteen feet.

“Q. Whereabouts were the other gentlemen when you first saw him? A. Right at the sign.”

The COURT.—It doesn't state what sign it was. A railroad sign, possibly.

Mr. HAWKINS.—Crossing. (Reads:)

"Q. Hadn't you seen him when you were further down the track to the west?

"A. Well, I didn't pay much attention to it until he was looking down.

"Q. Didn't you see him when he was looking down?

"A. No, I didn't pay no attention at all; we met all there together, the three of us.

"Q. You say you noticed the revolver?

"A. Yes, only for me I guess he might have been there yet, by the way he was lying there.

"Q. Didn't you say that one of his legs were bent under him?     A. Yes.

"Q. Whereabouts was the revolver with reference to him?

"A. About three or four inches from his hand; I did not go near him—about eight feet.

"Q. Could you describe the pistol?

"A. Yes, that is the pistol.

"Q. You could tell that day it was an automatic?

"A. Yes, sir.

"Q. Who did the telephoning?

"A. I did. Well, I called the police. [93]

"Q. And then you and Mr. Brown and Mr. Lalonde came back to town?

"A. No, we came back with the sheriff; we all rode back in the auto with the sheriff.

"Q. After you went up to phone to Reno, did you go any closer to the body?

"A. Yes, sir, we went back there before the sheriff arrived. He had stopped breathing and everything,

and I guess he was dead before that time.

“Q. What time in the day was that?

“A. We left here about nine-thirty, and walked slow.

“CORONER.—(Q.) Were you just out for a walk?

“A. Yes, just for a walk, and was heading towards Sparks.

“Q. Are you and Mr. Brown accustomed to taking a walk every day?     A. No, not every day.

“Q. You have known Mr. Brown some time?

“A. No, just met him there at the hotel.

“Q. You didn't know Mr. Lalonde?

“A. No, I didn't know him at all.

“CORONER.—Anything further, gentlemen?

“JUROR.—No.”

The COURT.—Have you not other witnesses here?

Mr. HAWKINS.—Can't you cross-examine Mr. Collins; there is nothing more for him except the identification of the gun?

Mr. KEPNER.—I don't want to cross-examine him until the gun is here.

Mr. HAWKINS.—I will call Mr. Ed Neasham.

**Testimony of James Edward Neasham, for  
Defendant.**

Mr. JAMES EDWARD NEASHAM, called as a witness on behalf of the defendant, after being sworn, testified as follows:

(Testimony of James Edward Neasham.)

Direct Examination.

(By Mr. HAWKINS.)

Q. You are a son of Mr. Neasham, the deceased?

A. I am.

Q. Where do you live, Mr. Neasham?

A. Reno, Nevada.

Q. Where were you living February 26th and 27th, 1915?

A. At 607 North Virginia Street, Reno.

Q. Is that your father and mother's home?

A. It is. [94]

Q. And was at that time?      A. It was.

Q. Did you see your father, Mr. Neasham, after Friday morning of that day, until he was dead?

A. Friday morning?

Q. Yes.

Mr. KEPNER.—What day?

Mr. HAWKINS.—February 26th, the day before he was shot.      A. I saw him on Friday morning.

The COURT.—(Q.) You mean the last time you saw him was on Friday morning?

A. He didn't ask that, that is it, though.

Mr. HAWKINS.—(Q.) The last time you saw him alive was Friday morning, the day before he was shot on the following Saturday?      A. I believe so.

Q. Did he or not stay at home that night, Friday night?      A. I don't know.

Q. Did he or not come home Friday night?

A. I have no means of knowing that.

Q. You testified at the coroner's inquest, didn't you, Mr. Neasham?      A. I did.



(Testimony of James Edward Neasham.)

Q. I will ask you if at that inquest you were not asked the following questions, and make the following answers:

“Q. You say that you didn’t see Mr. Neasham after Friday morning?     A. No, Friday morning.

“Q. Didn’t he stay at home on Friday night?

“A. No, he didn’t come home that night.

“Q. Was your mother at home?     A. She was.”

Q. Were those questions asked you, and did you make those answers?     A. I did.

Mr. HAWKINS.—That is all.

Cross-examination.

Mr. KEPNER.—(Q.) Where were you on Friday, the 26th day of February, 1915?

A. I was attending classes at the University.

Q. Were you at home at all during the day on Friday?

A. I don’t remember whether I came home that noon or not.

Q. Where were you during Friday night?

A. Why, I had dinner at the Fraternity House, and in the evening went to a smoker given in the University [95] Gymnasium.

Q. What time did you go home that night, if you went home?

A. Some time between eleven and twelve.

Q. At night?     A. At night.

Q. Was the family up when you got home that night?     A. No.

Q. Was the house dark?     A. It was.

Q. What did you do after you got home?

(Testimony of James Edward Neasham.)

A. I retired.

Q. Where was your bedroom?      A. Upstairs.

Q. I understand you immediately retired to your bedroom after you entered the house between eleven and twelve o'clock Friday night?      A. I did.

Q. What time did you get up Saturday morning?

A. Ten-thirty.

Q. About ten-thirty Saturday morning, February 27th?      A. About ten-thirty.

Mr. KEPNER.—That is all.

**Testimony of Harry Hill, for Defendant.**

Mr. HARRY HILL, called as a witness on behalf of the defendant, after being sworn, testified as follows:

Direct Examination.

(By Mr. HAWKINS.)

Q. Mr. Hill, you live in Reno, Nevada?

A. Yes, sir.

Q. What official position do you hold, if any?

A. County Treasurer.

Q. How long have you been the County Treasurer of Washoe County?

A. Since the 4th day of January, 1915.

Q. As such County Treasurer has there come into your possession a revolver in the matter of the Neasham hearing?

A. Yes, sir, there was one delivered to me by the coroner of Reno township.

Q. Have you that revolver with you?

A. Yes, sir.

(Testimony of Harry Hill.)

Q. Will you produce it? (Witness produces revolver.)

Q. What, besides the revolver have you—in connection with the revolver?

A. Nothing at all except some of the shells.

Mr. KEPNER.—I can't hear you.

A. Shells.

Mr. HAWKINS.—(Q.) The magazine and shells?

A. Yes.

Q. How many loaded shells came into your possession with the pistol [96] from the coroner?

A. Eight loaded and one empty?

Q. And you have those now? A. I have.

Q. What is the number of that gun, if it has a number?

A. Well, I am sure I don't know, I never looked—thirty-two. I believe.

Q. Thirty-two caliber? A. Yes, sir.

Q. Has the gun a number on it? A. Yes, sir.

Q. And what is the number? A. 54589(r).

Q. And that is the gun and the shells that were delivered to you by the coroner? A. Yes, sir.

Q. When? A. On March 3, 1915.

Q. You have had it in your possession since that time? A. Yes, sir.

Mr. HAWKINS.—Take the witness.

Cross-examination.

Mr. KEPNER.—(Q.) Is this pistol in the same condition it was when you received it?

A. Yes, sir, as far as I know.

Mr. KEPNER.—That is all.

(Testimony of Frank Collins.)

Mr. HAWKINS.—I ask that the pistol, magazine and cartridges be marked Defendant's Exhibit Number 1.

(The pistol, magazine and cartridges are admitted in evidence, and marked Defendant's Exhibit No. 1.)

Mr. HAWKINS.—I would now like to recall Mr. Collins.

**Testimony of Frank Collins, for Defendant  
(Recalled).**

Mr. FRANK COLLINS, recalled by defendant for further examination, testified as follows:

Mr. HAWKINS.—(Q.) Mr. Collins, I hand you a pistol, admitted in evidence as Defendant's Exhibit Number One, and ask you to examine the same, and state whether or not that is the gun or pistol which you testified you sold to Mr. Neasham about six o'clock in the afternoon of February 26th, 1915, the day before he was found shot?      A. Yes, sir.

The COURT.—Is that all?

Mr. HAWKINS.—That is all, your Honor.

**Cross-examination.**

Mr. KEPNER.—(Q.) Take that pistol and show to the jury what you did when, as you stated in your direct examination, you showed Mr. Neasham how to work it. (Hands pistol to witness.) [97]

A. Well, Mr. Neasham didn't know anything about the pistol at all.

Q. Never mind that, Mr. Collins, just show the jury what you did.

A. Well, Mr. Neasham told me that he had never

(Testimony of Frank Collins.)

used an automatic gun in his life, and didn't know anything about it.

The COURT.—Don't state anything you are not asked. Counsel asked you to state what you did to explain the working to Mr. Neasham.

A. Well, I showed him how to load the gun.

Q. Well, show us; that is what he is asking you—just show us.

A. The first thing I showed him was how to load the magazine (illustrating by putting cartridges in magazine); then I showed him how to put the magazine in the pistol.

The COURT.—You need not bother about putting it all the way in.

A. Well, I showed him how to throw the first shell in the cylinder of the gun, just this way (illustrating); I showed him how to put the hammer on, and put the safety on when he shot it.

The COURT.—(Q.) That is, to put the safety on after he had shot it?

A. If he didn't want to use it, and didn't want to shoot.

Q. From the first explosion, until the safety goes on, it continues to explode successive cartridges, by merely putting your finger on the trigger?

A. No, we have to pull the trigger.

Q. You have to pull the trigger every time, but it does not need any further throw of shells in it?

A. No, sir, not after the first one; you just continue to pull the trigger.

Mr. KEPNER.—(Q.) What was the condition of

(Testimony of Frank Collins.)

the pistol when you delivered it to Mr. Neasham?

A. Loaded.

Q. What do you mean by that?

A. Why, loaded—there were nine shells in it.

Q. Where?

A. In the magazine, and one in the barrel.

The COURT.—(Q.) You threw one into the barrel, did you?

A. He did himself, after I showed him how.

Mr. KEPNER.—(Q.) Then when you handed the pistol to Mr. Neasham, there were nine shells in the magazine?

A. There was eight in the magazine, and one in the barrel.

Q. Just explain to the jury what Mr. Neasham did when he loaded it himself, as you stated?

A. What did he do with it? [98]

Q. Yes.

A. He loaded it, and put it in his pocket.

Q. What is that?

A. He loaded it, and put it in his pocket.

Q. Mr. Collins, you say when you gave the pistol to Mr. Neasham there was a cartridge in the barrel, and eight in the magazine? A. Yes.

Q. Now, what did Mr. Neasham do when he loaded the pistol?

A. He gave me the pistol back, and I unloaded it, and gave it back to see if he could load it.

Q. What time was this?

A. This was Friday afternoon, about six o'clock in the afternoon.



(Testimony of Frank Collins.)

Q. Where did you get the pistol?

A. I bought it; I got it on consignment.

Q. Now which?      A. I got it on consignment.

Q. From whom?      A. Matt Parrott.

Q. Matt Parrott of Reno?      A. Yes.

Q. What do you mean by "got it on consignment"?

A. He don't sell second-hand guns, and I take them from him and sell them, because he has no license.

Q. So Matt Parrott gave you this gun?

A. Yes.

Q. To sell for Matt Parrott?      A. Yes.

Q. When was that?

A. I could not tell you; I get guns from him all the time.

Q. How long before the 26th day of February, 1915, was it?

A. Might have been six months, and might have been a week.

Q. What is your best judgment?

A. I could not say.

Q. Was it three months?      A. I could not say.

The COURT.—(Q.) Did you have other weapons of the same kind?

A. Yes, I have all the time; I have a dozen now, I guess, in the store that belongs to him.

Mr. KEPNER.—(Q.) But you are positive you got this gun from Matt Parrott?      A. Yes.

Q. What is the number of this gun?

A. I don't know.

(Testimony of Frank Collins.)

Q. Did you ever know?      A. No, sir.

Q. Did you report the purchase of it?

A. I don't have to report the purchase of it—I didn't buy it.

The COURT.—(Q.) Does not the law require you to report the purchase [99] of arms you sell?

A. It does the purchase, but not when you get it upon consignment like that.

Q. Are you sure of that?      A. Yes, sir.

Mr. KEPNER.—(Q.) So you made no report of the gun when you acquired it from Matt Parrott?

A. No, sir.

Q. And you say the law does not require you to report it?      A. No, sir.

Q. And you didn't report the sale of it?

A. I don't have to report any sales.

Q. I was not asking you what you have to do, I am asking you if you did?

A. We don't report any sales.

Q. And you didn't report the sale of this particular gun?

A. No, sir, we don't report any sales.

Q. How long have you lived in Reno?

A. About twenty years.

Q. What has been your business?

A. Pawnbroker.

Q. During all that time?

A. No, sir, not all the time.

Q. What has been your business?

A. Cattle-raising—different enterprises.

Q. How long were you in the cattle business?

(Testimony of Frank Collins.)

A. Probably four or five years.

Q. Well, now, how long?

A. Four or five years.

Q. What four or five years was that?

A. Well, after 1902.

Q. After 1902?      A. Yes.

Q. You commenced the cattle business about 1902?

A. Yes.

Q. What had you done prior to that, Mr. Collins?

A. Steward in a hotel.

Q. What hotel?

A. Different ones—United States, all the way from San Francisco to New York.

Q. The United States Hotel?

A. Different ones; I was traveling steward for the Santa Fe Railroad Company, the Denver & Rio Grande, the Colorado & Southern.

Q. During the past twenty years?

A. Yes, sir, at different times.

Q. Then you haven't been continuously in Reno during the past twenty years?      A. No, sir.

Q. What part of the time have you been in Reno?

A. I have been in Reno now nine years steady.

[100]

Q. Nine years steady?      A. Yes, sir.

Q. What has been your occupation during those nine years?

A. Well, I said I was steward in a hotel, and in the pawnbroker business, and different business.

Q. How long were you steward in a hotel, and what hotel was it?

(Testimony of Frank Collins.)

A. Steward in the Mexico for two years, and steward for two years in the Thomas Cafe, and I was chef at the Riverside for a year.

Q. What year was that?      A. I don't remember.

Q. What year were you steward at the Thomas Cafe?      A. The last year.

Q. What year was that?      A. I don't remember.

The COURT.—(Q.) The last year you were in Reno, don't you live there yet?

A. The last year the Thomas Cafe was in Reno.

Mr. KEPNER.—(Q.) What year was it?

A. I don't remember.

Q. About what year?      A. I guess eight or nine.

Q. 1908 or 1909?      A. Yes, sir.

Q. And what year was it that you were steward at the Riverside Hotel?      A. 1901.

Q. To when?      A. I was there four months.

Q. And what year was it you were steward at this other hotel you speak of?

A. Mexico, 1903 and 1904.

Q. Where were you from 1904 to 1909?

A. In Reno.

Q. What were you doing?      A. Different things.

Q. What, for instance?      A. I can't remember.

Q. Haven't any idea at this time?      A. No, sir.

The COURT.—You certainly have some idea what you were doing.

A. I was working at different business; I was in the cigar stand work a year, in a jewelry store—different places.

The COURT.—You have some memory.      Counsel

(Testimony of Frank Collins.)

is entitled to ask these questions.

Mr. KEPNER.—(Q.) Is that the best answer you can give us as to what your occupation was from 1904 to 1909?

A. Yes; I worked a year for Ben Barbox there; worked a year for Woods and Company; worked at the Mexico Hotel; worked at Lochman & Mayer's.

Q. What year did you work for Lochman and Mayer?

A. Three years ago; I worked off and on there; I was sick for two years. [101]

Q. I am asking you to confine your answer to the time between 1904 and 1909.

A. I can't remember the places I worked in.

Q. What is your answer?

A. I say I can't remember exactly the places I worked in.

Q. You don't remember? A. No.

Q. And from 1909—that was the last year you worked for the Thomas Cafe? A. I believe it was.

Q. What did you do after you left the Thomas?

A. Went to work for I. S. Wood and Company.

Q. What was the business?

A. Pawnbrokers and jewelry store.

Q. How long did you work for I. S. Wood and Company? A. About a year and a half.

Q. That would bring you up to 1910?

A. I was sick for a year and a half, and didn't do anything.

Q. When were you sick?

A. Sick when I quit Wood.

(Testimony of Frank Collins.)

Q. What date was that?

A. 1911, I should judge.

Q. Do you remember the day of the month?

A. No, I don't.

Q. Do you remember positively the year you were taken sick?      A. I think it was 1910 or 1911.

Q. What was the nature of your sickness?

A. Sciatic rheumatism.

Q. You were sick how long?      A. Two years.

Q. Where were you during those two years?

A. In Reno and California.

Q. Whereabouts in Reno?

A. Where did I live?

Q. During the time you were sick?

A. I lived on Church Lane for about a year, and  
541 West Third Street.

Q. Where on Church Lane?      A. Mr. Mayo's.

Q. What is his first name?

A. I could not tell you that.

Q. How long did you live with Mayo?

A. Pretty near a year.

Q. Then where did you go?

A. 541 West Third Street.

Q. You were still sick?

A. I was still sick when I first moved up there.

Q. How long continuously have you lived at 541 West Third Street?

A. It will be, I think it is three years in May.

Q. Three years this May?      A. Yes, sir. [102]

Q. How long were you in California?

A. Oh, probably three or four months.



(Testimony of Frank Collins.)

Q. During the time of your sickness?

A. Yes, sir.

The COURT.—(Q.) You say there is no regulation in this State requiring dealers in firearms to keep a memorandum of the number and the date of sale, and the person to whom sold?

A. No, sir; just when you buy the article; if you purchase a gun, or anything that way, you make a report every day.

Q. What do you mean by “make a report”?

A. Police report every morning of all purchases during the day, or loans; but there is no law requiring that you have a record of your sales, that is, to give to the chief of police.

Q. Then the arrangement you have with this man who has you sell his pistols, is an evasion of the law?

A. No, sir.

Mr. KEPNER.—(Q.) You say you receive pistols from Matt Parrott frequently? A. Yes.

Q. How many have you of Matt Parrott’s pistols at the present time? A. Three.

Q. Are they Savage automatic pistols?

A. No, sir.

Q. Who did you first talk to about this sale?

A. Thornton Read.

Q. When was that?

A. The day after, I think, of the day it happened.

The COURT.—(Q.) The day after you sold it, or that the death of Mr. Neasham occurred?

A. I think it was a day or two after Mr. Neasham had died.

(Testimony of Frank Collins.)

Mr. KEPNER.—(Q.) Was it the day after the inquest?

A. I don't remember; I didn't know anything about the inquest; I wasn't subpoenaed on the inquest at all.

Q. Was it Sunday morning, Tuesday, or what day of the week was it?      A. I could not say, I forget.

Q. What day of the week was it that you sold the pistol?      A. On Friday, I think it was.

Q. Who did you talk to about this case?

A. Who did I talk to?

Q. Yes.      A. Thornton Read.

Q. Who else did you talk to?

A. That is about all.

Q. That is about all?

A. At the time, you mean? [103]

Q. At any time?

A. Oh, I don't know; I have talked to lots of people about it, the same as anybody else would that reads it in the paper—I have talked to the sheriff about it.

Q. When did you talk to the sheriff about it?

A. Oh, several days afterwards, I guess.

Q. How recently did you talk to the sheriff about it?      A. Day before yesterday.

Q. Who else have you talked to about it within the last few days?      A. Kirby Unsworth.

Q. Who else?

A. I don't know; I may have talked to a dozen people about it.

Q. Who?      A. My partner.

(Testimony of Frank Collins.)

Q. Well, who else?

A. Well, I can't remember everybody I speak to in a day; there was no secret connected with it, I didn't make any secret of it.

Q. Any what?

A. Any secret of it; I talked to anybody who spoke to me about it.

Q. Talked to anybody about it?

A. Why, certainly; talked to Mr. Burke to-day about it.

Q. To-day?      A. Yes.

Q. How did you happen to talk to Kirby Unsworth about it?      A. How is that?

(The reporter reads the question.)

A. Why, we came up on the train together—we were both subpoenaed on the case.

Q. How is that?

A. We came up on the train together—we were both subpoenaed on the case.

Q. Day before yesterday?      A. To-day.

Q. Well, you said you talked to him day before yesterday?

A. I did not; I didn't see him the day before yesterday.

The COURT.—(Q.) I understood you to say you had talked to him the day before yesterday.

A. I didn't see him, your Honor, day before yesterday.

Mr. KEPNER.—(Q.) Then you didn't talk to Kirby Unsworth day before yesterday?

A. No, sir, I didn't see him.

(Testimony of Frank Collins.)

Q. You did talk to him coming up on the train from Reno? A. Yes. [104]

Q. When was that? A. This morning.

Q. This morning? A. Yes.

Q. Prior to this morning when did you talk to Kirby Unsworth about this case?

A. I don't think I ever spoke to him.

Q. Who did you talk to within the last three days?

A. Well, my partner; Mr. Burke—I was just speaking to him over there just now.

Q. Now, I will ask you if it is not a fact that within the last two days you went to the county treasurer's office in Reno, and examined this pistol with Kirby Unsworth? A. With Kirby Unsworth?

Q. Yes. A. No.

Q. Did you go to the county treasurer's office at all? A. I did.

Q. Who was with you? A. The attorney.

Q. Who?

A. I forget the gentleman's name there.

Q. This gentleman here (indicating)? A. Yes.

Q. When was that? A. Yesterday.

Q. Who did you meet there?

A. Harry Hill and Dan Dunkle, and Mrs. Hill.

Q. And Kirby Unsworth?

A. I don't remember seeing Kirby there.

Q. You don't remember seeing Kirby? A. No.

Q. What was the subject of your conversation there at the treasurer's office, with reference to this pistol?

(Testimony of Frank Collins.)

A. There was no conversation to it; I examined the pistol.

Q. Examined the pistol; Kirby Unsworth wasn't there?

A. He wasn't there; I don't remember of seeing him if he was there.

Q. You didn't talk to him on that occasion?

A. No, sir.

Mr. KEPNER.—That is all.

Redirect Examination.

Mr. HAWKINS.—(Q.) You said in answer to one question that you didn't know the number of this gun; will you state by what means, if any, you are able to identify this gun as being the gun which you sold to Mr. Neasham, as you have testified?

A. Yes, sir.

Q. State what it is?

A. The gun is marked here with a steel punch on the top of the magazine.

The COURT.—(Q.) Is the gun itself marked, or just the magazine? A. Just the magazine. [105]

Q. Do you mean that magazine could not fit any other gun of the same caliber?

A. It would fit any gun.

Q. How do you identify the gun, then?

A. I can't identify the gun only by remembering it; but the magazine is marked.

Mr. HAWKINS.—(Q.) How did that mark on the magazine come there?

A. I put it there with a steel punch.

The COURT.—(Q.) Before you sold it?

(Testimony of Frank Collins.)

A. Yes, sir.

Mr. HAWKINS.—That is all.

Recross-examination.

Mr. KEPNER.—(Q.) Where is the steel punch mark on the magazine?

A. Right here (indicating).

Q. Right where?

A. Right on here (indicating).

Q. Just show it to the jury—show that steel punch mark to the jury.

(Witness indicates the mark to the jury.)

Q. You put that mark there before you sold the pistol?      A. Yes, sir.

Q. How many Savage automatic pistols have you sold?      A. Probably a hundred in the last year.

Q. You mark them all with that same steel punch mark?      A. Yes.

Q. In that same place?      A. Yes.

Mr. KEPNER.—That is all.

Mr. HAWKINS.—Just a minute, Mr. Collins. (Q.) Is there anything else about the gun or the magazine—

The COURT.—I cannot allow you to go back over that question. You have approached him twice on that, and he stated exactly how he came to remember this pistol, and we cannot go over the same ground.

Mr. HAWKINS.—He had not finished when counsel took him this last time.

The COURT.—No; this is merely in cross-examination of your direct. Is that all with the witness?

Mr. KEPNER.—That is all, your Honor.



(Testimony of Frank Collins.)

Mr. HAWKINS.—I wanted to ask him some questions.

The COURT.—You may ask him anything that does not trench upon what I have ruled.

Mr. HAWKINS.—(Q.) I will ask this question: State whether or not the magazine of that gun is perfect, or defective in any way? [106]

Mr. KEPNER.—Objected to as calling for the conclusion of the witness, and it is not redirect examination.

The COURT.—It is not redirect examination, no; but still there is no particular harm in that. The witness has shown a familiarity with these weapons to an extent of dealing in them, that justifies letting his statement go before the jury as to whether the magazine is in normal condition, or is defective. Is there any defect in the magazine, he asked you?

A. The magazine was very tight to put the shells in, and I took a pair of pliers and opened it up a little, so the shells would go in easier.

The COURT.—You would not call that a defect; I suppose that is merely a lack of ready action or movement.

A. It would be alright for anybody that understands how to handle a gun, but a man not experienced in getting the shells in, it would be very hard for him, so I took a pair of pliers and opened it, so the shells would go in more readily.

Mr. HAWKINS.—That is all.

(The Court admonishes the jury, and at 4:30 P. M. an adjournment is taken, until Thursday, March 9, 1916, at 10 o'clock A. M.)

Thursday, March 9th, 1916.

Court convened 10 o'clock A. M.

(All parties present.)

**Testimony of Thornton A. Read, for Defendant.**

Mr. THORNTON A. READ, called as a witness on behalf of the defendant, after being sworn, testified as follows:

Direct Examination.

(By Mr. HAWKINS.)

Q. Your name is Thornton A. Read?

A. It is; yes, sir.

Q. You live in Reno, Nevada?      A. I do.

Q. And have for a great many years?

A. Yes, sir.

Q. Where were you living in February and March, 1915?      A. Reno, Nevada.

Q. What was your business or occupation during those months?

A. Clerk of the police department of Reno, Nevada.

Q. How long had you been so employed?

A. Since the 4th day of January, 1915. [107]

Q. Are you so employed to-day?      A. I am, sir.

Q. Prior to that time what was your business?

A. I was constable for Reno township.

Q. For what length of time were you constable?

A. Two years.

Q. Do you recall the time that Mr. Neasham was found dead out east of Reno?      A. I do.

Q. As an officer of the police department did you or not make any investigation to ascertain where the

(Testimony of Thornton A. Read.)

gun came from that was found by his side?

A. I did.

Q. State what you did in reference to that matter.

A. By direction of the chief I was detailed—

Q. Chief of police?

A. Chief of police, yes, sir—I was detailed to find out, if possible, where the revolver which he had in his possession at that time, or pistol, I should say, had been purchased.

Mr. KEPNER.—I move that be stricken out, “the revolver he had in his possession.”

Mr. HAWKINS.—I agree to it.

The COURT.—Yes, that will go out. Just answer the question.

A. I was directed to locate, if possible, where Mr. Neasham had purchased a pistol.

Mr. KEPNER.—I object to that, if the Court please.

The COURT.—That is merely stating what he was directed to do; there is no harm in that; that does not prove that Mr. Neasham bought a pistol; he is just telling what he was directed by his superior to do.

Mr. HAWKINS.—Go ahead.

A. I made investigation of several—

The COURT.—Don’t make general statements of that kind. As to whether it was an investigation or not the jury will find; state what you did.

A. I entered the store of Butcher and Collins on Virginia Street and questioned Mr. Collins as to

(Testimony of Thornton A. Read.)

whether or not he had sold a thirty-two automatic Savage pistol.

The COURT.—Now, of course you understand anything Mr. Collins told him is not evidence; he is permitted to state what he did, but he cannot state what he was told. [108]

Mr. HAWKINS.—(Q.) Did you or not secure information at that time concerning this Savage thirty-two automatic?

Mr. KEPNER.—That is objected to under the ruling of the Court.

The COURT.—No, that is perfectly proper; he is stating simply the result of what he did; he is not permitted to state what the information was, or to state what was told him, that is hearsay; he is simply asked to state a fact as to what he did.

Mr. KEPNER.—If he confines himself to that kind of a statement, I have no objection.

The COURT.—Well, he has thus far.

(By direction the reporter reads the question.)

A. I did.

Mr. HAWKINS.—(Q.) Was or not that information to the effect that Mr. Neasham had purchased a thirty-two automatic Savage gun?

Mr. KEPNER.—I think that is objectionable, if the Court please?

The COURT.—Well, do you object?

Mr. KEPNER.—I object on the ground it is leading, and on the further ground that the answer to it would be clearly hearsay.

The COURT.—The objection is sustained.

(Testimony of Thornton A. Read.)

Mr. HAWKINS.—(Q.) In your investigation did you ascertain what you were told to ascertain, namely, whether or not Mr. Neasham had purchased a thirty-two automatic, which was found by him?

Mr. KEPNER.—Same objection.

The COURT.—Same ruling. You can't prove a fact that way.

Mr. HAWKINS.—(Q.) Were you able to find out where this gun or pistol that was found by Mr. Neasham's side was purchased by him?

Mr. KEPNER.—That is objected to for the same reason, and for the further reason that the question is indefinite and uncertain.

The COURT.—Well, it is objectionable upon the first ground. The objection will be sustained.

Mr. HAWKINS.—May I have the benefit of an exception to that ruling, your Honor?

The COURT.—Oh, certainly, you are entitled to an exception to any ruling.

Mr. HAWKINS.—That is all.

Mr. KEPNER.—That is all. [109]

**Testimony of Mrs. Matilda C. Neasham, for Defendant.**

Mrs. MATILDA C. NEASHAM, the plaintiff, called as a witness on behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HAWKINS.)

Q. You have already been sworn in this case, have you, Mrs. Neasham?     A. Yes.

Q. You are the plaintiff in this case?     A. I am.

(Testimony of Mrs. Matilda Neasham.)

Q. Is or not the estate of your deceased husband being administered in the District Court of Washoe County, Nevada?      A. It is.

Q. You are the administratrix of that estate?

A. I am.

Q. When did you last see your husband before you saw him after he was dead?

A. Just about eight-thirty on the morning of February 27th, 1915.

Q. About eight-thirty on the morning of February 27th, 1915?      A. Yes, sir.

Q. And when did you see him just last prior to that time?      A. That was the last time I saw him.

The COURT.—He is asking you, Mrs. Neasham, when was the time next previous to that that you had last seen him.

A. Well, he was with us all morning, had breakfast with us, dressed the baby, and helped as usual.

Mr. HAWKINS.—(Q.) That was Saturday morning?      A. Yes.

Q. Now, what I am asking, prior to Saturday morning when was the last time you saw him?

A. On Friday evening.

Q. What time Friday?

A. About six o'clock, I guess.

Q. Did he or did he not stay at home Friday night before Saturday?

A. I do not know; he was there when I got up in the morning, but whether he slept upstairs or not I don't know.

Mr. HAWKINS.—That is all. [110]



**Testimony of C. P. Ferrell, for Defendant.**

Mr. C. P. FERRELL, called as a witness on behalf of the defendant, after being sworn, testified as follows:

Direct Examination.

(By Mr. HAWKINS.)

Q. Mr. Ferrell, you are at present sheriff of Washoe County, Nevada? A. I am.

Q. How long have you been sheriff of Washoe County? A. Since January 1st, 1915.

Q. Prior to that time were you sheriff of Washoe County, Nevada?

A. Two years I was out, and eight years prior to that time, I was.

Q. Altogether how long have you served as sheriff of Washoe County?

A. Something over nine years.

Q. Do you recall the time that Mr. Neasham, mentioned in this record, was found dead or dying out east of Reno? A. I do.

Q. Do you recall who first notified you in regard to the matter? A. I could not speak their name.

Q. Did you go to the place east of Reno where Mr. Neasham's body was? A. I did.

Q. Who went with you?

A. Judge Unsworth; I would not be sure whether the undertaker went or not; I think not, as he came afterwards, arrived shortly afterwards; he might have went with us; I have forgotten.

Q. Where did you go, and what place did you find the body?

(Testimony of C. P. Ferrell.)

A. I judge it was close to a mile east of Reno, between Reno, what they call Coney Island, and to the spur track—off of the spur track of the Southern Pacific, where a cut runs down through where there is an oil-tank dug down deep, so the wagons can come in and load oil into the wagon.

Q. Where was it in reference to the Asylum grounds?

A. West of the Asylum grounds; it is on part of the Asylum ground—I think the Asylum owns that ground.

Q. What did you find when you arrived at this place?

A. We found a body lying in the cut, just opposite, on the north side of the bank from the oil tank, or oil pipe.

Q. Whose body?      A. William Neasham.

Q. State the position the body was in when you arrived there?

A. The body was lying on the right side, with the right arm—lying on [111] the right arm, the left arm lying slightly across the hips, and one of the limbs or legs slightly drawn, the other one extending straight, I don't know which one it was; the body lying the full length.

Q. Describe the size and condition of that cut in which you found the body.

A. The cut at the deepest point I should judge was about fourteen feet deep on the south bank of the cut; on the north bank of the cut it inclined a

(Testimony of C. P. Ferrell.)

little upwards, it was possibly a little less; then it tapers off to about a hundred yards, or a hundred and fifty yards, where it slopes up, to come up on a level with the ground.

Q. What was the character of the soil?

A. The soil is of a sandy nature, that is, on the bottom; the sides were rocky.

The COURT.—(Q.) The head was lying up the slope, you say?

A. Yes, sir.

Mr. HAWKINS.—(Q.) State, if you know, whether or not the ground was moist or dry at that time?

A. The top surface of the ground would be dry just after a thaw and freeze, or a freeze and a thaw.

Mr. KEPNER.—I object to that.

The COURT.—I don't see any objection to that; it is a description of the character of the soil.

Mr. HAWKINS.—(Q.) When you arrived at the scene, Sheriff, what did you do, and what did you find? State fully.

A. We came on the bank directly over the body, then turning westerly, walked around to where this grade comes down into the cut; we walked down in the cut to the body, and I picked up the pistol, and handed it to Mr. Unsworth; Mr. Unsworth looked at it a moment, and handed it back to me, and then we commenced viewing the body.

The COURT.—The witness had not mentioned the pistol before, had he?

Mr. KEPNER.—This witness had not.

(Testimony of C. P. Ferrell.)

The COURT.—(Q.) Was there a pistol lying there? A. There was.

Q. Lying near the body?

A. About eight inches of his right hand.

Mr. KEPNER.—What was that answer?

A. About eight inches of his right hand.

Mr. HAWKINS.—I would like to break the continuity of this examination [112] just for a moment to get some photographs in.

Q. Were you present on the ground when some photographs were taken? A. I was.

Q. I hand you a photograph, which I will ask to be marked for identification Defendant's Exhibit No. 2; and also another one which I will ask to be marked for identification Defendant's Exhibit No. 3.

(The photographs are marked Defendant's Exhibits Nos. 2 and 3, for identification.)

Q. Examine these two photographs, Mr. Ferrell, and state if those were the ones that were taken in your presence at the time referred to. (Hands photographs to witness.) A. They were.

Q. Do they correctly represent the ground at the time they were taken? A. Yes, sir.

The COURT.—(Q.) When were they taken?

A. In three or four days after finding the body.

Q. Oh, they were not taken at the time?

A. No.

Q. They simply represent the scene where the body was found? A. That was it.

Mr. HAWKINS.—(Q.) Two or three weeks?

The COURT.—Two or three days, he says.

(Testimony of C. P. Ferrell.)

WITNESS.—Three or four days.

Mr. HAWKINS.—(Q) State whether or not the view shown on those photographs represents the condition of things at the time the body was found there, with the exception of the individual being in the pictures.

A. Yes, sir, it does.

The COURT.—(Q.) There had been no physical change between the time you found the body and the time these photographs were taken?

A. No, the only change would be the tracks leading down, where people came down; the ground was the same.

Mr. HAWKINS.—(Q.) I call your attention to a photograph marked Defendant's Exhibit Number 2 for identification; what is the direction that is shown in that photograph?

A. This shows the direction of the cut running east and west.

Q. Where was the camera in reference to taking that picture east and [113] west from the place?

A. West.

The COURT.—(Q.) The top of that picture would be north, would it?

A. This bank would be north; the top of the picture would be east.

Q. Oh, the top of the picture would be east?

A. The top of the picture would be east.

Q. That road shown there, then, that traveled way, runs east and west? A. East and west.

Q. The high bank would be north, and the other

(Testimony of C. P. Ferrell.)

side south? A. Yes, sir.

Mr. KEPNER.—(Q.) Are not you mistaken, Sheriff; isn't it just the other way? A. No, sir.

The COURT.—(Q.) The figure of a man that is in that picture, where is that.

A. There is a man sitting at the spot where the body was found.

Q. The spot where you found the body on the ground is represented by the figure of the man who sits there?

A. Where he is sitting, yes, sir.

Mr. HAWKINS.—(Q.) I call your attention to Defendant's Exhibit Number 3 for identification; what is the direction on that picture as to the course of the road through the cut?

A. That is east and west, the same as the other. The gentleman is standing on the bank directly above where the body was found, just opposite the switch of the Southern Pacific track.

Q. In which direction is the gentleman standing as shown in this picture, from where the body was found down in the cut?

A. North; the body was lying south of the gentleman on the bank, in the cut.

The COURT.—(Q.) The railroad runs along the top of this high bank? A. Yes, sir.

Mr. HAWKINS.—(Q.) What is the railroad track shown in Defendant's Exhibit Number 3 for identification, nearest to the cut, the main line, or a switch or spur? A. It is a switch.

Mr. HAWKINS.—We offer the two photographs



(Testimony of C. P. Ferrell.)

marked Defendant's Exhibits Numbers 2 and 3 for identification, and ask that they be admitted in evidence as Defendant's Exhibits Number 2 and Number 3, respectively. [114]

Mr. KEPNER.—No objection.

(The photographs are admitted in evidence, and marked Defendant's Exhibits No. 1 and No. 2, respectively, and shown to the jury.)

Mr. HAWKINS.—(Q.) You said that you found a pistol within a few inches of the right hand of the deceased when you went there; what kind of a pistol was it?

A. I think they call them a Savage automatic.

Q. What caliber? A. Thirty-two.

Q. Did you take a record of the number of the pistol? A. I did.

The COURT.—(Q.) At the time?

A. No, sir, later; about a half hour afterwards.

Q. Before it left your possession? A. Yes, sir.

Mr. HAWKINS.—(Q.) I hand you a pistol, Defendant's Exhibit No. 1, in evidence, and ask you to examine the same, and state whether or not that is the pistol that you found at the time by the side of the body of Mr. Neasham.

A. Yes, sir, that is the pistol.

Q. State the condition the pistol was in when you picked it up from the side of the body of the deceased?

A. The pistol was lying the muzzle sloping downward, on a downward slope, where it had slid out of the hand.

(Testimony of C. P. Ferrell.)

Mr. KEPNER.—I object to that.

The COURT.—Leave out anything of that kind, Mr. Sheriff; that is for the jury to find, not for you to state, whether it was in his hand; you don't know it was in his hand.

WITNESS.—I didn't mean it that way—lying muzzle downward, with the sand or soft dirt in the muzzle of the barrel, and about eight inches from the hand.

The COURT.—(Q.) The right hand, I understood you to say, was lying under the body?

A. Lying under the body, and kind of this way (illustrating), on the right side, kind of with the hand upward.

Q. And the other lying across his hip?

A. Slightly; slightly across his left hip.

Mr. HAWKINS.—(Q.) State the condition of the pistol, whether it was cocked, or what?

Mr. KEPNER.—I object to that. This witness is an intelligent witness, and when he is asked to describe the condition of the gun, I [115] submit he can do it without any prompting from counsel.

The COURT.—Refrain from making suggestions to your witness, it always detracts from the value of testimony, either to have it brought out by leading questions, or the subject matter suggested.

Mr. HAWKINS.—(Q.) Go ahead, Sheriff, and state all about the condition of that pistol at the time you picked it up.

A. The hammer was back, and a loaded cartridge in the magazine,—in the chamber; the magazine con-

(Testimony of C. P. Ferrell.)

tained shells, but I didn't take them out at that time, not until afterwards, when I removed the magazine.

Q. What did you do with the gun after it was handed back to you, as you testified a moment ago, by Mr. Unsworth?

A. I locked it in my safe in the office.

Q. What did you finally do with it?

A. At the coroner's inquest I delivered it to Judge Unsworth.

Q. He was the justice of the peace and *ex-officio* coroner of Reno township? A. Yes, sir.

Q. State the condition of the gun at the time you delivered it to the coroner at the time mentioned, as compared with the condition of it as the time you picked it up by the body?

A. The gun was practically in the same condition, minus the dirt in the barrel, that had dropped out in the muzzle of the barrel; I had removed the loaded shell in the barrel, and taken the magazine out of the gun.

Q. On the ground when you went out there first, could you or not see tracks that had been made, if any had been made?

Mr. KEPNER.—I object to that as leading.

The COURT.—Don't suggest the subject matter that you want him to testify to, it always leads to objection.

Mr. HAWKINS.—I didn't intend to lead the witness; I was just trying to get directly at the point.

The COURT.—I understand that; but a suggestive question is just as objectionable as a leading

(Testimony of C. P. Ferrell.)

question. The witness is an officer of years' experience, and my observation teaches me that they are close observers of things of that kind; he can tell you all about the situation and surroundings there without leading him or suggesting to him.

Mr. HAWKINS.—(Q.) Did you at the time make investigations of the [116] ground surrounding the body?      A. I did.

Q. Now state fully what observations you made concerning the ground, the nature of it, the appearance of things, and what you saw.

WITNESS.—Your Honor, in making that answer I will have to draw a comparison, and explain.

The COURT.—Well, now, Mr. Sheriff, just answer the question, and if there is anything you think should be suggested, if it is not suggested by counsel, it is not for witnesses to volunteer.

WITNESS.—I did not mean to suggest it, merely to explain what was leading up to it.

The COURT.—That will come out naturally.

WITNESS.—Arriving at the scene, I found three tracks leading down to where the body was lying; one track leading to the spot, two other tracks leading to within about eight or ten feet of the spot. Those tracks turned and went back, making altogether five lines of tracks, three going and two returning.

The COURT.—When you speak of tracks, it is understood you are referring to human footprints.

WITNESS.—I examined the north bank of the cut to see if any human tracks had come down there;

(Testimony of C. P. Ferrell.)

seeing none, I examined the south bank, and found none there; I examined for a number of feet around the body, possibly fifteen or twenty feet; I saw no other tracks other than what I mentioned.

Mr. HAWKINS.—(Q.) Did you or not examine the clothing on the body at that time?

A. I did not.

Q. What, if anything, did you observe on the body?

The COURT.—You mean wearing apparel?

Mr. HAWKINS.—Yes. (Q.) What did he have on that you noticed?

A. Wearing apparel?

Q. Yes.

The COURT.—(Q.) What did the body have on?

A. Just his clothing.

Q. Well, there are different articles of clothing. In a general way, how was he dressed; he had a pair of trousers on, I suppose? [117]

A. Trousers, and what I would call a sack suit—I didn't pay much attention.

Q. Dressed in the usual way? A. Yes.

Mr. HAWKINS.—(Q.) Did you observe any injuries on the body, if so, state what? A. I did.

Q. Where were they, and what?

A. What, about the injuries?

Q. Yes.

A. I found an injury through the mouth in the back part—in the head.

Q. Did you see any other injuries on him?

A. I didn't find any other.

Q. Can you state the nature of that injury that

(Testimony of C. P. Ferrell.)

you refer to through the mouth?

A. You mean what had caused it?

Q. Yes.

The COURT.—And its nature, I suppose whether it was a cut, or a hole, or what.

Mr. KEPNER.—I don't think the witness is competent to express an opinion.

The COURT.—Any man with experience of long years standing as sheriff, and who has had acquaintance with knife wounds or gunshot wounds is competent to give his judgment as to what the nature of the wound was. It has been frequently held that men who were not officers, but whose lives had been spent on the frontier under conditions which brought them in contact with matters of that kind, may be asked to state what in their judgment caused a certain injury.

Mr. KEPNER.—After it has been shown they had had experience.

The COURT.—This man has been sheriff.

Mr. KEPNER.—That does not qualify him as an expert on wounds.

The COURT.—It justifies the Court in permitting his evidence to go to the jury—a man who has been sheriff, especially in a country like Nevada, or California, or any of these States, for a period of eight years.

Mr. KEPNER.—I accept the judgment of the Court.

The COURT.—He asks you to describe the nature



(Testimony of C. P. Ferrell.)

of this injury, and what its appearance was.

WITNESS.—The injury, I would describe it as a blow-out from concussion. [118]

Q. You are speaking now of the external injury.

A. There was none outside; it was through the mouth, but toward the back of the head, like concussion, tearing quite a large hole, and carrying everything in front of it, caused by the explosion of the shell fired from the gun.

Mr. KEPNER.—I object to the cause of it.

The COURT.—Yes, he has not asked you anything except to describe the nature of the wound, and whether it in appearance was made by knife or gunshot, or by some other means. I think the witness' answer, though, is proper.

Mr. KEPNER.—I think the latter part of that answer should be stricken out—caused by concussion.

The COURT.—No, I think not; I think it is competent.

(By direction the reporter reads the answer.)

The COURT.—(Q.) This wound had no exit, no mouth coming out?

A. No, there might have been possibly a small place through there, but I didn't notice it at the time.

The COURT.—Well, of course it is a matter of common knowledge and observation that a bullet always makes a larger hole coming out than it does going in.

WITNESS.—This was all puffed out in the back, carried everything to the back, and puffed it out, but whether it broke through or not, I hardly think it

(Testimony of C. P. Ferrell.)

did; I could not tell at that time.

Mr. HAWKINS.—(Q.) From your experience as an officer, and observation of this wound which you have described, can you state how far the muzzle of the gun was from the point of entrance when the shot was fired?

Mr. KEPNER.—I object to that as purely the opinion of an expert.

The COURT.—That is clearly objectionable, because it would depend upon circumstances that this witness could not possibly know; it is not the subject of expert testimony at all.

Mr. HAWKINS.—Will your Honor bear with me just a moment?

The COURT.—Yes.

(Counsel for defendant discusses the admissibility of the question.)

The COURT.—I will give you an exception; it is incompetent to my mind, and not the subject of expert testimony. [119]

Mr. HAWKINS.—Very well, I will ask a question.

The COURT.—You have asked it, and I have ruled on it.

Mr. HAWKINS.—I would like to put it in another form.

The COURT.—Very well.

Mr. HAWKINS.—(Q.) From your experience as an officer, are you able to state the distance that a shot fired from this pistol, Defendant's Exhibit One, would make a hole larger than the bullet fired from that gun?

(Testimony of C. P. Ferrell.)

Mr. KEPNER.—If your Honor please, in addition to the objection suggested by your Honor, I make the further objection that the question assumes a fact which is not in evidence; there is absolutely no evidence that the deceased came to his death from a thirty-two caliber automatic cartridge, fired from a pistol which has been identified, and the question assumes that fact.

The COURT.—Well, the objection does not add anything to the first objection, that it is incompetent. The question is excluded as being incompetent.

Mr. HAWKINS.—To which your Honor will give us an exception.

The COURT.—Yes. Is that all of the witness?

Mr. HAWKINS.—That is all, your Honor.

Cross-examination.

Mr. KEPNER.—(Q.) Calling your attention to Defendant's Exhibit Number 2, I understood you to say that the high side of the bank was on the north side of the cut?

A. Let me see the photograph. (Exhibit is handed to the witness.)

A. Now what was your question?

(The reporter reads the question.)

A. No, sir.

The COURT.—Sheriff, you did so state, that this bank represented the north.

A. This was the north, but I said the high bank was on the south, that the bank was the deepest on the south, and sloped toward the north.

(Testimony of C. P. Ferrell.)

The COURT.—Well, I didn't understand you in that way.

Mr. KEPNER.—I didn't either.

Q. Then the high side of the bank, as shown by this photograph, is on the south side of the cut? [120]

A. At the tank; I think if you will look at it, you will see at the deepest, where the oil tank is there on the south bank.

Q. And this tank represents the position of the outlet of the tank you speak of?

A. Yes, and that was the deepest point, I think the testimony will show I said that was the deepest point.

Q. That is on the south side of the cut?

A. That is on the south side of the cut.

Q. What time of day was it, Mr. Ferrel, that you first arrived at this cut on the 27th day of February, 1915?

A. Between the hours of ten and twelve o'clock.

Q. Now can you fix the time any more definitely than that?

A. Well, I will have to say then, eleven o'clock; but it was after court was called, I know, and I got back before noon.

Q. Now as a matter of fact, wasn't it ten o'clock when you arrived at the cut?

A. No, I should say between ten and twelve.

Q. You should say it was what?

A. Between ten o'clock and twelve o'clock.

Q. Between ten and twelve? A. Yes.

Q. Now I would like to have your best judgment

(Testimony of C. P. Ferrell.)

as to the actual time that you arrived there?

A. Well, I would say it was between—I was back before twelve o'clock from the scene.

The COURT.—Well, he is asking you about what time you arrived there?

A. Why I should say—I don't know, I would not say exactly—I would say then between ten and eleven o'clock, because I was back before twelve.

Mr. KEPNER.—(Q.) That is your best judgment? A. Yes, sir.

Q. As to the time you arrived at this cut?

A. Yes.

The COURT.—(Q.) That was in the forenoon, Mr. Sheriff? A. Yes, in the forenoon.

Mr. KEPNER.—(Q.) By the expression "this cut" we both refer to Defendant's Exhibit number two—that is what you are referring to, isn't it?

A. I am referring to the cut.

Q. The COURT.—That is the only cut that has been spoken of here.

Mr. KEPNER.—(Q.) Did you testify at the coroner's inquest in Reno on the occasion when you say you delivered this gun to Mr. Unsworth? [121]

A. I did.

Q. And you were asked about this gun at that time? A. I was.

Q. I will get you to state whether you were asked this question by the district attorney: "Q. Did you take the gun?" to which you answered "Yes, sir, I picked the gun up." A. I did.

Q. Then you produced the gun; and then you were

(Testimony of C. P. Ferrell.)

asked this question, referring to this same pistol: "Is this in the same conditon as it was?" to which you answered, "No, I removed the shell from the chamber, and there are nine shells in the magazine."

A. Well, you are getting two questions together.

Q. The question and your answer. The question: "Is this in the same condition as it was?" to which you answered: "No, I removed the shell from the chamber, and there are nine shells in the magazine." Did you so testify?

A. It is compounded in two questions.

The COURT.—No, he is reading to you what occurred at the coroner's inquest. He is simply asking you if you gave that answer at the coroner's inquest. Read it to him again.

Mr. KEPNER.—(Reading:) "Is this in the same condition as it was?" "A. No, I removed the shell from the chamber, and there are nine shells in the magazine."

Q. Did you so testify?

A. I made that answer to two questions.

Q. Now the question was repeated: "Q. Is it in the same condition? A. It is in the same condition with the exception that the safety was on the trigger, I took the shell out of the chamber, and there is nine in the magazine." Did you so testify?

A. No, sir, I did not. I will explain my testimony.

The COURT.—No, he is just asking you about this testimony.

WITNESS.—They got the answers to the questions mixed.



(Testimony of C. P. Ferrell.)

Mr. KEPNER.—(Q.) What is that?

A. They have got the answers to the questions mixed, that is all.

The COURT.—Did you state in substance then, Mr. Sheriff, at that inquest, that you had removed the shell from the chamber, and that there were nine shells in the magazine?

A. No. The magazine won't hold nine shells.

Q. You have stated it twice there. [122]

A. I never saw that testimony—I haven't seen what this lady has written down.

Mr. KEPNER.—Well, I suppose this lady would take correctly what you testify.

A. I suppose that, too, but I didn't see it.

The COURT.—That is an immaterial digression.

Mr. KEPNER.—(Q.) Now did you testify in substance, Mr. Sheriff, that when you picked this pistol up the safety was on the trigger? A. I did not.

The COURT.—(Q.) What is meant with an instrument like that that “the safety is on the trigger”?

A. If the safety is on it is an impossibility to discharge the gun by pulling the trigger.

Q. That is, if the safety is on the trigger?

A. Yes, then it is caught; when the safety is released then you are at liberty to—

Q. Then there is danger?

A. Then there is danger.

Mr. KEPNER.—(Q.) Who have you talked to about this case, Sheriff?

A. Oh, I don't know how many; I have talked with a great many.

(Testimony of C. P. Ferrell.)

Q. You have talked with a great many; how frequently have you talked about this case?

A. Well, not in the last month or so, I have not talked much; but prior to that time it was pretty near every day that somebody would ask me in regard to it.

Q. Who were they?

A. Oh, I don't remember, promiscuously, as I would meet people on the street; some hadn't heard it; and some were not here, and were asking me about it.

Q. And that series of conversations that you have had with people about this case has covered the time that has intervened since the 27th of February, 1915, up to about a month ago?

A. The conversations subsequent to that time?

Q. The series of conversations.

The COURT.—No. You say you have talked with a great many people since this occurred, and he asks you if those conversations have covered the entire period between February, 1915, to about a month ago.

A. Well, I hardly understand his question, covering the entire period.

The COURT.—(Q.) Well, have they been interspersed throughout that period? You ought to be able to understand that. [123]

A. Yes, at odd times people would ask me questions about it, get to talking about it.

Mr. KEPNER.—(Q.) At different times since February, 1915, and frequently you have talked with

(Testimony of C. P. Ferrell.)

people about this case?

A. Yes, in the office and on the street we were talking.

Mr. KEPNER.—That is all.

Redirect Examination.

Mr. HAWKINS.—(Q.) You were asked about the gun or the pistol, when you picked it up, and questions were read to you, using the word “shell,” and the answer in which you said that you removed the shell from the chamber? A. I did.

Q. Was that a loaded or an empty shell?

A. It was loaded.

Q. Was or not the gun in position to shoot when you picked it up? A. It was.

Q. What would have been necessary to have fired a shot from the gun when you picked it up?

A. Pull the trigger.

Mr. HAWKINS.—That is all.

Recross-examination.

Mr. HEPNER.—(Q.) Now at the coroner’s inquest after testifying that you had removed the shell from the chamber, were you asked this question: “Q. You have the empty cartridge now?” which you answered “Yes.” Did you so testify?

A. Yes, sir; Judge Unsworth has the empty cartridge—picked it up.

The COURT.—No, he is asking you whether you so testified at the coroner’s inquest.

Mr. KEPNER.—I ask that that portion of the answer be stricken as not responsive.

The COURT.—That may go out, except the “yes,

(Testimony of C. P. Ferrell.)

sir''; it is not responsive.

WITNESS.—If you will give me a chance to explain those questions; I have not saw the questions.

The COURT.—Sheriff, you have no interest in this case at all, and just answer the questions that are asked of you, and if you want an opportunity to explain, one or the other counsel will give you an opportunity. [124]

WITNESS.—I want to answer the questions truthfully, but I don't want to be confused with the questions.

The COURT.—Counsel cannot confuse you by simply reading to you what purports to have been testified to by you at the coroner's inquest, and asking you if you so testified.

WITNESS.—If he will ask the questions in rotation, as I testified.

The COURT.—He is asking them apparently exactly as it occurred from the reporter's transcript of the testimony.

WITNESS.—One question after another?

The COURT.—Yes, one question after another.

Mr. KEPNER.—That is all.

Mr. HAWKINS.—That is all.

### **Testimony of F. O. Chick, for Defendant.**

Mr. F. O. CHICK, called as a witness on behalf of the defendant, after being sworn, testified as follows:

#### **Direct Examination.**

(By Mr. HAWKINS.)

Q. Mr. Chick, you live in Reno, and have for some

(Testimony of F. O. Chick.)

time?      A. Yes, sir.

Mr. KEPNER.—I will save time by admitting this witness is the F. O. Chick referred to in the testimony; he is the man who was present at the autopsy by the sheriff and the coroner.

The COURT.—Well, that may not cover what they wish. Proceed with the examination.

Mr. HAWKINS.—(Q.) Taking up the admission, you went to the scene where you found the body of William C. Neasham?      A. I did.

Q. On February 27, 1915?      A. Yes, sir.

The COURT.—(Q.) Did you go out with the sheriff?      A. Yes, sir.

Mr. HAWKINS.—(Q.) And who else?

A. The coroner.

Q. Coroner Unsworth?

A. Coroner Unsworth, yes, sir.

Q. When you arrived at the scene you saw the body of Mr. Neasham there, did you?      A. Yes, sir.

Q. State the position the body was in when you first saw it?

A. The body was lying on the right side, in a curled position, the right arm lying a little ways from the body.

Mr. KEPNER.—I didn't hear that.

The COURT.—The right arm lying a little ways from the body. [125] don't understand what you mean by that; it was not severed from the body, was it?

A. The arm was lying in a reclining position away from the body; that is, the body was lying on the

(Testimony of F. O. Chick.)

right, the arm was just dropped on this side.

Mr. HAWKINS.—(Q.) Did you observe the wearing apparel that the deceased had on at that time; if so, state what it was, and its condition?

A. He was dressed in a full suit of clothing, and an overcoat.

Q. State the condition of his clothing, if you observed?

A. The overcoat was buttoned, the clothing was intact; as I remember, there was a little blood on the overcoat, on one lapel, if I remember correctly.

Q. Did you observe anything lying near the body, if so, what was it, and where was it?

A. A hat was lying—a derby hat was lying perhaps ten inches from the body.

Q. In what direction from the head?

A. To the right, that is, at the right side.

Q. The right side, about ten inches? A. Yes.

Q. What else did you see there, if anything, close to the body, and where was it?

A. A revolver was lying, I would say eight inches from the right hand.

Q. Which direction was the muzzle of the pistol from the hand, if you noticed? A. I can't say.

Q. What was the condition of the ground around the body, if you observed at that time?

A. A sandy condition.

Q. What did it show, if anything, about tracks, or anything else?

The COURT.—If you observed, if you didn't, why, say so.



(Testimony of F. O. Chick.)

A. Well, I observed a few tracks coming from the east toward the body; I didn't take much interest in that; I was interested in other matters.

The COURT.—(Q.) Were you an officer at the time?     A. I am the undertaker.

Q. Oh, you were the undertaker?     A. Yes, sir.

Mr. HAWKINS.—That was covered in counsel's statement, that this witness was the undertaker.

The COURT.—I had him confused with the coroner.

Mr. HAWKINS.—(Q.) State the physical condition of the face and head [126] of the body when you saw it there, as to any wounds or not, and if any, what were they, and what did you see?

A. The mouth was covered with blood; the wound I could not see.

Q. Why?     A. It was inside the mouth.

Q. Any other blood or fresh wound, or anything on the body at that time that you saw?

A. At that time?

Q. Yes.     A. No, not that I saw.

Q. What about the teeth?

A. There were no scars on the lips at all; the teeth were intact.

Q. What became of the body after you saw it there, as you have testified?

A. We took it to our parlors—Perkins, Gulling Company.

Q. After it arrived at the undertaking parlors of Perkins and Gulling—you are an employee, or are interested in that undertaking firm of Perkins and

(Testimony of F. O. Chick.)

Gulling, are you?      A. I am.

Q. After it arrived there did you make further examination of the body, if so, state what you did in reference to the matter?

A. After we got the body there we undressed it preparatory for the doctor's view.

Q. State whether or not there were any bruises or injuries on the body other than what you have testified to; any blood on it anywhere, any black and blue places, any cuts, any burns, anything showing any fresh wounds of any kind, other than the wound in the mouth that you have mentioned?

A. Any scars of any kind, did I understand you?

(By direction the reporter reads the question.)

A. Well, there was a scar on the forehead.

The COURT.—Well, what counsel wants to get at, Mr. Chick, is whether or no you saw any evidences of what you would characterize as violent injury, that is, the effect of a bruise or blow, an external wound? You say there was something on his forehead, what was that?

A. Well, there was a scar in front, and under the hair, presumably—

Q. Like a blow, or what?

A. It was a white streak, as I remember.

Mr. HAWKINS.—(Q.) It was a white streak, there wasn't any black and blue place there?

A. No.

Q. No cut?      A. No. [127]

Q. No abrasion of the skin?      A. No.

Q. No blood there?

(Testimony of F. O. Chick.)

The COURT.—Don't lead the witness, let him tell the condition of the body.

Mr. HAWKINS.—(Q.) Did you or not examine the wound in the mouth? A. I did.

Q. What did you do in examining that wound?

A. Opened the mouth, and ran my finger in the wound.

Q. Where was the wound in the mouth that you say you ran your finger into?

A. It was on the right side of the throat, just above the palate.

The COURT.—(Q.) In the throat, or was it above?

A. By running your finger in, it was a little to the right, above; that is, it would be a little above the palate.

Q. Down quite low? A. Yes, above the palate.

Mr. HAWKINS.—(Q.) So to get your finger into the wound, you had to insert your finger into his mouth? A. Yes, sir.

Q. How far into the wound did you extend your finger? A. Only a short way.

Q. Why did you only extend it a short ways?

A. My finger wasn't long enough.

Q. How big is your finger that you extended into the wound?

A. Well, it is the middle finger that you would have to use, it is the longest.

Q. Well, about how big in diameter is your middle finger that you put into this wound in the deceased's mouth?

A. Five-eighths of an inch, perhaps.

(Testimony of F. O. Chick.)

Mr. KEPNER.—He might hold his finger up.

The COURT.—Five-eighths of an inch would be a pretty good size finger, I think.

WITNESS.—Well, I guess possibly it would not be that.

The COURT.—About three-quarters of an inch, I should think. It would depend upon whether counsel means diameter or the circumference; of course there is a very decided difference. [128]

Mr. HAWKINS.—I asked, as I remember it, the diameter of his finger.

The COURT.—You didn't say the diameter, you said the size.

Mr. HAWKINS.—Read the question.

The COURT.—He has answered it, it is not necessary to take up the time.

Mr. HAWKINS.—(Q.) When you arrived at the scene did you observe whether the deceased was dead or not at that time?

A. I examined Mr. Neasham, and I found that there was a very slight pulsation of the heart.

The COURT.—(Q.) When you got there?

A. Yes, sir.

Mr. HAWKINS.—(Q.) Did you or not examine the clothing to ascertain what the deceased had upon his body? A. I did.

Q. Do you remember what you found?

The COURT.—You mean any personal articles?

Mr. HAWKINS.—Yes.

A. That I could not say, as the coroner was there and everything was turned over to him; that has gone

(Testimony of F. O. Chick.)

from me now; I know that I saw everything that was there.

Q. When you arrived at the scene, you and the sheriff and the coroner, were there any other parties there at that time?

A. There were two men, two or three men there at the time.

The COURT.—(Q.) Around the body?

A. In that vicinity, yes; not right at the body.

Mr. HAWKINS.—(Q.) Where were they, if you remember, when you arrived?

A. As I remember, there was one man met us at the gate from the main road leading into this lane, and directed us the way to go to where Mr. Neasham's body was; and the other two men, as I remember, were on the railroad, standing on the railroad track above where Mr. Neasham was lying in the pit below.

Q. Do you remember who those people were?

The COURT.—(Q.) Did you know them?

A. I did not.

Mr. HAWKINS.—(Q.) Do you recall now who they were? A. I can't recall their names.

Q. Do you recall what became of them when you came back to town?

A. As I remember, one of them anyway, came back with us in the machine; [129] I would not say whether the other two did or not, I don't recall that, but one of them came back to town with us in the machine.

(Testimony of F. O. Chick.)

The COURT.—(Q.) Did you bring the body back with you in the car?

A. No.

Mr. HAWKINS.—(Q.) How did you bring the body back to town?

A. I had two of these men that were at the track when we got there, I had them go to a nearby house, and telephone the office.

The COURT.—(Q.) For a wagon?

A. For a wagon, yes.

Mr. HAWKINS.—(Q.) Did you stay there until the wagon came?

A. I did, yes.

Q. These men that were there, do you know whether or not they testified at the coroner's inquest afterwards? A. Only through—

The COURT.—I suppose the record will show that; that is not a matter that this witness can testify to.

Mr. HAWKINS.—No, it does not show in that manner.

The COURT.—Oh, you want him to identify them as the same men who testified at the coroner's inquest?

Mr. HAWKINS.—Yes, that is, if I can. (Q.) Do you know whether or not the men who were there, and the man that you say came in with you afterwards, testified at the coroner's inquest?

A. I can't say to that, as I didn't stop at the inquest; if I remember correctly, I was one of the first that was examined, and I left immediately, but one of the gentlemen that were there, came into the



(Testimony of F. O. Chick.)

parlors after we had come back from there, and inquired what time the inquest would be held, and where, and I directed him to the city hall; that is as far as I can say.

Q. I call your attention to Defendant's Exhibit Number 2; how did the wagon get into there to get the body, if it did? (Hands exhibit to witness.)

A. From the lane that runs up from the main road to the Asylum.

Q. Where was the body when you got there with reference to the wagon track down in the bottom of that pit?

A. Mr. Neasham's feet were lying almost in the wheel track.

The COURT.—(Q.) At the side of the track, the wagon track?

A. Right at the side of the wagon track. [130]

Mr. HAWKINS.—(Q.) What size man was Mr. Neasham?

A. Mr. Neasham was a very large man in stature.

Q. Well, approximately how tall?

Mr. KEPNER.—Is not that in the record already, Mr. Hawkins?

Mr. HAWKINS.—No.

The COURT.—Well, what is the materiality of it?

Mr. HAWKINS.—It may and it may not develop to be very material. I would not ask it unless I thought it material, and it will only take a minute.

The COURT.—(Q.) What was he, a man about six feet?

WITNESS.—Yes, I would say so.

(Testimony of F. O. Chick.)

Q. A large man?

A. A large man, yes; I would say he would weigh two hundred pounds.

Q. Did you know him before his death?

A. I did.

Q. What was his business?

A. As I knew him, a rancher.

Q. He was a rancher?      A. Yes.

Q. A strong man physically?      A. Yes, sir.

Mr. HAWKINS.—That is all.

Cross-examination.

Mr. KEPNER.—(Q.) What time did you arrive at the oil-pit, Mr. Chick?

A. About ten o'clock in the morning.

Q. Of the 27th of February?      A. Yes, sir.

Q. The sheriff and the coroner arrived there at the same time you did?

A. I took the sheriff and coroner in the car.

Q. In your car?      A. Yes, sir.

Q. I understood you to say that you thought you detected a slight fluttering of the pulse?

A. Yes, sir.

The COURT.—He said the heart was still beating slightly.

Mr. KEPNER.—(Q.) Where did you take the pulse, at the heart or at the wrist?

A. At the wrist.

Q. You thought you detected a slight pulse beat?

A. A fluttering, yes.

Q. Did you take the pulse with your finger or with your thumb?

(Testimony of F. O. Chick.)

A. My finger, if I remember correctly.

Q. Are you quite sure, Mr. Chick, that the deceased had an overcoat [131] on?

A. I am almost sure.

Q. Have you the clothes that you removed from the body?     A. I have.

Q. Here?     A. Yes, sir.

Mr. KEPNER.—I ask that they be produced.

(Witness produces clothes.)

Mr. KEPNER.—(Q.) Will you take the coat; you spoke of there being blood on the coat.

The COURT.—On the lapel of the overcoat.

Mr. KEPNER.—(Q.) Look at that coat, and state whether that is the blood you refer to? (Indicating on coat.)

A. That is the blood, yes.

Q. And where is that on the coat?

A. That is on the sleeve.

Q. What sleeve?

A. The right. I thought there was an overcoat, but that was just from my—

The COURT.—Oh, the human memory is not perfect.

WITNESS.—That is, I haven't noticed the clothes, or I haven't thought of that; it struck me there was an overcoat; that is all the clothes there were, so it is very evident there was not.

The COURT.—(Q.) Do you now refer to the place on the sleeve where you saw the blood; you stated before it was on the lapel of the overcoat?

A. That was the way I remember it; I could not

(Testimony of F. O. Chick.)

say; I know I saw some blood on the front of the coat.

Q. As you saw the body lying, how would the blood get on the coat at the elbow there?

A. With the arm lying in this position (illustrating), a man's head lying at the right.

Q. You didn't state the head was lying on his arm; you said the arm was lying partly under the body?

Mr. KEPNER.—He said the arm was lying slightly away.

The COURT.—Yes; it was the sheriff that said the arm was lying slightly under the body.

WITNESS.—He was lying on the right side.

The COURT.—(Q.) Was his head or mouth lying on that arm?

A. No.

Q. How would that blood get on there?

A. Unless the head was lying in the position this blood was. [132]

Q. You saw it, we didn't see it; all we want to know is the fact. You stated that the blood was on the lapel, of course it might have fallen from the mouth on to the lapel; now you suggest that place on the arm as the discoloration of blood, and I want to know how, as you found the body lying, it could have gotten there.

A. I gave my answer as I remembered it, Judge; it was over a year ago, and that was the way that it came to me.

Q. As refreshed by what you now assume to be blood making that discoloration on the sleeve, can you state whether the man's head was lying on his

(Testimony of F. O. Chick.)

arm, instead of away from the body?

A. The head might have been—

Q. Wait a moment, Mr. Chick; it is not what might have been; if you don't remember, say so, but don't speculate; tell us what the fact was.

A. I will have to say I don't remember.

The COURT.—We don't want speculation; the jury is not permitted to speculate themselves, and they cannot undertake to decide cases on mere speculation of witnesses; they want facts.

Mr. KEPNER.—I ask that this coat be marked Plaintiff's Exhibit "C" for identification.

The COURT.—Very well.

Mr. KEPNER.—And I offer the coat in evidence at this time.

The COURT.—(Q.) That was the coat taken from the body, was it?

A. Yes.

(The coat is admitted in evidence, and marked Plaintiff's Exhibit "C.")

Mr. KEPNER.—(Q.) Speaking of this— I think you referred to it as a scar in the forehead—will you describe that scar to the jury?

A. As I remember the scar, it was about an inch and a half long, starting about at this part of the frontal bone (showing), and just running in under the edge of the hair.

Q. How deep was it?

A. Well, that I can't say; it was very slight; it was more like a white streak in the flesh where it had healed.

(Testimony of F. O. Chick.)

Q. I object to your stating that; simply state your observation, Mr. Chick.

Mr. HAWKINS.—That is what he was stating.  
[133]

The COURT.—I think the answer was entirely proper. You asked him to state, and any of us are permitted to state what appeared to us to be the character of a mark on a body.

Mr. KEPNER.—(Q.) Will you just indicate on my forehead about the point where that scar started? (Witness indicates on counsel's forehead.)

A. Starting at that point, and running back into the hair; just about an inch and a half, I would say, as I remember it.

Q. Will you just indicate on my head the place where that wound which you traced into the mouth, had its point of exit, if it had come out.

The COURT.—I think that is a very difficult thing for anybody to tell, as long as it didn't come out; it might have come out of the ear, or might have come out of the throat—you can't tell anything about it. It is pure speculation, directly in line with the question you objected to from the other side.

Mr. KEPNER.—I think perhaps it is, your Honor.

Q. The wound in the mouth, as I understood you to say, was the size of your finger?

A. I could get my middle finger—I could insert my middle finger in the wound.

Q. Middle finger of which hand?

A. My right hand.

Mr. KEPNER.—That is all.



(Testimony of F. O. Chick.)

Redirect Examination.

Mr. HAWKINS.—(Q.) Mr. Chick, will you tell us about what you observed in reference to this slight scar, which you have referred to as being on the deceased's head, and above the right eye, as to its appearance?

Mr. KEPNER.—He didn't refer to it as a slight scar.

Mr. HAWKINS.—I beg your pardon, he did.

The COURT.—Leave out the "slight," and ask him to describe the scar.

Mr. HAWKINS.—(Q.) Just describe that scar that you referred to on the forehead; tell the size of it, its appearance, and all about it, as you observed it.

A. The scar was whitish in appearance, an inch and a half long, and perhaps three-sixteenths of an inch in width, as I remember it.

Q. Well, what was its appearance as to being fresh or old? [134]

Mr. KEPNER.—That is a matter, I think, of expert opinion.

The COURT.—I hardly think so; I think any one can testify to a physical fact of that kind. Of course it is not infallible. We have often seen wounds that look old, that had recently been made; that is, those that did not break the skin, but caused only an abrasion. It is not a definite subject; surgeons can only give their estimate as to about how long before a wound found on a body was made. But bruises and

(Testimony of F. O. Chick.)

wounds of a character made with blunt instruments, and wounds made with sharp instruments, are of such common observation that most any one can give an opinion. The jury are the judges of the value to be attached to it, but it is admissible, I think.

(By direction the reporter reads the question.)

A. It looked old.

The COURT.—(Q.) It looked as though it had not been made recently, you mean?

A. Yes, sir, as far as I could see.

Mr. HAWKINS.—(Q.) Was the skin broken there, or not? A. No, sir.

Q. Was the place on the forehead at and immediately around the—

The COURT.—He has described that often enough, Mr. Hawkins; he told where it commenced and where it ran.

Mr. HAWKINS.—Yes; I was going to ask him whether there was any contusion or blue spot or black spot there.

The COURT.—Well, you may ask him that.

Mr. HAWKINS.—(Q.) Was there or not a blue or black spot around the vicinity of this whitish looking scar, as you have described?

A. There was not.

Mr. HAWKINS.—That is all.

Recross-examination.

Mr. KEPNER.—(Q.) Now, as a matter of fact, Mr. Chick, I will ask you if the bottom or lowest part of that scar was not slightly discolored?

(Testimony of F. O. Chick.)

A. I don't remember of only just a whitish look it had.

Q. You base your judgment that it was an old scar on the fact there was no blood in that vicinity?

A. I base my judgment on that as upon previous scars that I have seen. [135]

Q. There was no blood? A. Not there.

Q. And no discoloration?

A. Not as I remember it, only just as I say, the whitish color.

Mr. KEPNER.—That is all.

Mr. HAWKINS.—That is all. At this time, if the Court please, I wish to offer in evidence parts of the pleadings, and will read into the evidence certain parts of the defendant's amended answer.

The COURT.—Read the answer on which the case is being tried?

Mr. HAWKINS.—Yes, your Honor.

The COURT.—It is not necessary; it may always be referred to.

Mr. HAWKINS.—I know it may be referred to, but I would like to read that into the record as part of the evidence.

The COURT.—It is not necessary to offer it as evidence; it is a part of the record, you can always read it—read it to the jury in argument, or read it to them at any time. You are never called upon to offer pleadings in evidence. The Court cannot permit matters of that kind to be put in the record. If a pleading has been superseded by an amended pleading, so that it does not necessarily figure in the trial

of the cause unless attention is called to it, it may be referred to for the purpose of showing an admission or declaration, or anything of that kind.

Mr. HAWKINS.—May I offer it, subject to your Honor's ruling?

The COURT.—Yes, you may offer it.

Mr. HAWKINS.—I desire to offer in evidence, and to read from, the defendant's amended answer, the paragraph numbered one of the affirmative defense; and I desire to offer in evidence and to read into the record, paragraph numbered five of the plaintiff's reply. Do I understand that I may read that, or does your Honor object?

The COURT.—You may read it at any time; it is not to go into the evidence; I have already ruled upon that.

Mr. HAWKINS.—To save the record, may I have an exception to your Honor's ruling?

The COURT.—You are permitted to read it to the jury as a part of the pleadings, because it is admitted to be a part of the pleadings, as [136] I understand the other side, they don't object.

Mr. HAWKINS.—I desire to offer in evidence a certified copy of the inventory and appraisement in the matter of the Estate of William C. Neasham, deceased, and petition for sale of real estate in the matter of the Estate of William C. Neasham, Deceased, together with the schedules thereto attached; and a certified copy of the order of sale of real property in the matter of the Estate of William C. Neasham, Deceased, all pending in the Second Judicial

District Court of the State of Nevada, in and for the County of Washoe; the three instruments referred to being all certified by one certificate, and under one cover.

Mr. KEPNER.—Objected to, if the Court please, as incompetent, irrelevant and immaterial.

The COURT.—What is the object of this?

Mr. HAWKINS.—Showing the nature of the estate, condition of it as to motive for suicide.

The COURT.—What is that?

Mr. HAWKINS.—Showing the condition of the estate as to the matter of the deceased being involved financially, as going for what it is worth, as to motive leading to the question of suicide. The papers I have offered show insolvency.

The COURT.—What is the feature that shows insolvency?

Mr. HAWKINS.—The petition for sale of the real estate sets forth it is necessary to sell it in order to pay the debts, which is conclusive that the estate is insolvent.

The COURT.—Well, if it has any bearing. I think there is no doubt but what you are entitled to show motive, if you can, but I think this bears very remotely upon anything of that kind.

Mr. KEPNER.—I don't insist on my objection.

The COURT.—I don't think there is any reason why it should not go in; I will admit it.

(The papers offered are marked Defendant's Exhibit No. 4.)

Mr. HAWKINS.—I desire at this time to read

depositions on behalf of defendant, which have been taken and published, beginning with the deposition of Seymour M. Ballard. There are three depositions taken at the same time, and certified together, being depositions of Seymour [137] M. Ballard, Edward A. Anderson, and Norman R. Haskell.

(Counsel for defendant commences the reading of the deposition of Seymour M. Ballard.)

Mr. KEPNER.—We renew the objection. (Referring to objection on page 2 of the deposition of Seymour M. Ballard.)

The COURT.—What is the purpose of that part of the deposition; what does it bear on?

Mr. HAWKINS.—This is with reference to the nonpayment of the premium.

The COURT.—This has nothing to do with that. Why don't you just go to that part that is material? Very frequently at the time a deposition is taken it cannot be known just what will be material, and the witness is sometimes examined on a lot of things. This would not bear on the question of payment.

Mr. HAWKINS.—Yes; in the policy there are statements which the party is bound by, and it applies to the whole matter, which I will show upon the presentation of the case, your Honor. I suggest it is ten minutes after twelve, and unless your Honor objects, that we take a noon recess at this time.

(The Court admonishes the jury, and a recess is taken until 1:30 P. M.)



Thursday, March 9, 1916.

AFTER RECESS—1:30 P. M.

(All parties present.)

Mr. HAWKINS.—If the Court please, may the record show that Defendant's Exhibit 4, being the Estate papers, will be considered as having been read to the jury?

The COURT.—Yes.

Mr. HAWKINS.—Just before we took a noon recess, I had begun to read some of the depositions; with the consent of Court and counsel, I would like to suspend that, and put on some of the witnesses who are here.

The COURT.—Very well. [138]

**Testimony of Dr. S. C. Gibson, for Defendant.**

Doctor S. C. GIBSON, called as a witness on behalf of the defendant, after being sworn, testified as follows:

Direct Examination.

(By Mr. HAWKINS.)

Q. Your name is S. C. Gibson?

A. S. C. Gibson.

Q. What is your profession and occupation, Doctor?

A. Doctor of medicine.

Q. How long have you been a doctor of medicine?

A. About thirty-five years.

Q. You have been engaged in the profession during that time?

A. All of that time.

Q. Are you a graduate of any school of medicine, if so, what?

A. Missouri Medical College.

Q. You live in Reno, Nevada?

A. Yes.

(Testimony of Dr. S. C. Gibson.)

Q. And have for how long?

A. A little over twenty years, about twenty years.

Q. You were living in Reno in February and March, 1915?      A. Yes.

Q. Did you or not at that time hold any official position, if so, what?

A. Yes, county physician of Washoe County.

Q. County physician?      A. County physician.

Q. How long have you been county physician of Washoe County, Nevada?

A. Well, this time I guess about three years; I have been before, four years ago.

Q. And altogether, how long have you served in the capacity of county physician of Washoe County?

A. Oh, perhaps seven or eight years.

Q. Did you know William C. Neasham in his lifetime?      A. I did.

Q. How long have you known him?

A. Oh, I guess I have known him—well, for several years, maybe thirteen years, or sixteen years.

Q. Do you recall the time of his death?

A. Yes, I held a post-mortem on the body, and examined the body.

Q. You held a post-mortem on his body; what date was that, Doctor?      A. February 27th, 1915.

Q. Please state fully, and in your own way, what that post-mortem disclosed; what you found, what you saw, and what you did in making this post-mortem on the body of Mr. Neasham, stating specifically and definitely [139] all the wounds that

(Testimony of Dr. S. C. Gibson.)

you found, the nature of them, and where they were, and all about it.

A. On that date, on the 27th, I was phoned by the undertaker, Unsworth—Judge Unsworth—to go to Perkins and Gulling's undertaking parlors, and hold a post-mortem on the body of Mr. Neasham, stating that he had shot himself that day.

Mr. KEPNER.—I ask that go out.

The COURT.—Counsel simply asked you, Doctor, if you performed an autopsy; you said you did, then he asked you to go ahead and state the results.

A. I found a wound on the right side of the throat, penetrating, and also a fracture of the skull, of the back part of the skull, in the occipital region.

Mr. KEPNER.—What is that?

A. In the occipital region, the back part of the skull, just above and to the right of the prominence of the skull, what we call the occipital protuberance; that is the only way I can describe it, I don't know what else to call it.

Mr. HAWKINS.—All right, go ahead.

A. As I stated before, I found a wound in the throat, a penetrating wound, introduced my finger into his throat, and found the wound; and also I could touch fractured bone in the wound; then I examined the posterior part of the skull, and found it prominent.

Q. What do you mean by "found it prominent"?

A. Well, found a lump that was unnatural there.

Q. Go ahead.

A. Then I removed the scalp; I turned it back

(Testimony of Dr. S. C. Gibson.)

from the head, and I found a fracture, a stellated fracture—a star-shaped fracture, and a piece of the bone pushed out beyond the surface of the contour of the bone.

The COURT.—Well, proceed, Doctor.

A. That is about all I did, unless you ask me some more questions.

The COURT.—Well, the wound you have described in the throat, and the fracture of the skull, did you ascertain whether they were produced from one and the same cause?

A. No; from the history of the case—[140]

Q. No, I am talking about your autopsy, not the history.

A. That is the way we make our diagnosis, Judge—the doctors, is by history.

Q. But you can only testify to what you did, and what the results of your examination were.

A. Well, I found a penetrating wound in the throat, and a fracture of the bone; then I removed the scalp, pushed it back, the posterior scalp; then I found a prominence there, a fracture there—a stellated fracture.

Q. You testified to that. Didn't you go into the cavity at all?      A. No.

Q. Didn't you examine to see what it was that had produced this?

A. No, I tell you why I didn't; his brother-in-law was there, and he requested me not to cut the body any more than I had to.

Q. You were there to ascertain what caused the

(Testimony of Dr. S. C. Gibson.)

death, were you not?

A. The cause of death, and I found out what was sufficient.

Q. Would the wound in the throat cause death?

A. Yes, both causes, anterior fracture and posterior fracture.

Q. That is all you did, turned down the scalp to ascertain what the cause of this protuberance on the skull was, and found there was a stellated fracture there, with a piece of bone displaced? A. Yes.

Q. But what produced that you didn't investigate?

A. No.

Q. Was the appearance of the skull at the point of this protuberance such that the effect found there could have been produced by a blow?

A. It had driven out.

Q. It was forced out?

A. It was forced from the inside.

Q. Apparently?

A. Apparently, yes, from the inside.

The COURT.—I think it is a very sad thing in this case that somebody interested was not there at the time, to have a proper investigation made as to all the circumstances.

Mr. HAWKINS.—That may be true, your Honor, yet it seems to have been a fact that nobody paid any attention to it.

Q. Where was the protuberance in the back part of the skull located, with reference to the entrance or beginning of the wound which you discovered in the back part of the throat?

(Testimony of Dr. S. C. Gibson.)

A. It was posterior, of course it was back and a little upwards, I have a skull here that I can show [141] you. (Witness produces skull.)

Mr. KEPNER.—What is this, a skull or the skull?

A. It is a skull.

Mr. HAWKINS.—(Q.) Now, Doctor, using the skull, take your time and explain in detail just where the entrance of the wound which you discovered in the back part of the throat of the deceased was.

A. I should judge the entrance was about here (indicating on skull).

Q. Now, will you indicate where “here” is, so that it may appear in the record.

A. Just anterior and above the foramen magnum.

The COURT.—(Q.) It was a little to the right, and above the palate, wasn't it?

A. It went through the soft palate.

Q. I mean by the palate, what we understand among laymen as the palate, is the little protuberance?

A. The curtain that hangs down, it went through there on the right of the *medium* line, and it also came out at the right of the *medium* line, at the occipital protuberance, a little above that, and just about here; I should judge just about there (showing on skull).

Mr. HAWKINS.—(Q.) Did the wound cut the hard palate of the mouth or not? A. No.

Q. What was it you said it cut?

A. The soft palate.



(Testimony of Dr. S. C. Gibson.)

The COURT.—(Q.) That is, the tissues to which the curtain is hung?

A. That is the curtain.

Mr. HAWKINS.—(Q.) Did the tongue show any evidence of injury?

A. No, neither the tongue, nor the lips, nor the teeth.

Mr. KEPNER.—What is that?

A. The tongue showed no injury.

The COURT.—Neither the tongue, lips, nor teeth, he said, showed any evidence of injury.

Mr. HAWKINS.—(Q.) What was the character of the entrance of the wound into which you say you inserted your finger?

A. It was ragged, and also small comminuted fractures.

The COURT.—(Q.) What bone?

A. I think the occipital bone. From there to here is the occipital bone. (Showing on skull.)

Mr. HAWKINS.—(Q.) Then if I understand, in inserting your finger [142] into this wound, your finger came in contact with the bones?

A. With the fractured bones; yes.

The COURT.—(Q.) That fractured bone your finger came in contact with was not the fracture in the skull? A. Not the posterior, no.

Q. Not the posterior? A. Oh, no.

Q. If the wound you found in the throat, Doctor, was produced by some agency, which continuing on, produced this fracture of the occipital bone here, which you found in the posterior region of the skull,

(Testimony of Dr. S. C. Gibson.)

if that passed in a practically direct course from the point of entrance to the point where you found this fracture, it would pass through the base of the brain?

A. Through the base of the brain, yes.

Q. And would be sufficient to cause death?

A. Sufficient to cause death, yes.

Mr. HAWKINS.—(Q.) What would be the effect upon a person receiving a wound which you have described, in the manner in which you have described it?

A. Such a wound as I have described would produce immediate death.

The COURT.—(Q.) Produce what?

A. Immediate death.

Mr. HAWKINS.—(Q.) Have you or not had in your experience much or little practice in reference to gunshot wounds?

Mr. KEPNER.—Objected to as immaterial.

The COURT.—No, I don't think so. I think that inquiry is material.

Mr. KEPNER.—I think it is immaterial, because he has testified to the essential facts without objection.

The COURT.—The witness has not pretended to say what produced this wound at all; he has described a wound, but he has not pretended to say what was the producing cause of it. Have you had any considerable experience in the treatment of gunshot wounds, counsel asks you.

A. Not very extensive, just in civil practice, nothing like a military surgeon.

(Testimony of Dr. S. C. Gibson.)

Q. You have come in contact in your practice with gunshot wounds?     A. Yes.

The COURT.—Now, what question do you want to ask?

Mr. HAWKINS.—(Q.) Can you state the difference between a gunshot [143] wound, or a pistol-shot wound, made by the pistol being fired close to the object that it strikes, and when it is some distance from the object?

Mr. KEPNER.—Objected to. That is the same question that was asked this morning, and I objected to it as incompetent.

Mr. HAWKINS.—I don't think so.

The COURT.—Yes, I think so. That involves the same element as the question you put to another witness this morning.

Mr. HAWKINS.—I would like an exception to the ruling, and I would like the record to show that we offer to prove by this witness that—

The COURT.—I don't accept offers to prove; you can ask any question, and I will rule on it, and you can take your exception accordingly.

Mr. HAWKINS.—Then to make the record, if the Court please:

Q. If a pistol-shot was fired with the pistol close to the anatomy of a human person, right up close to it, would there be any difference between the character of the wound thus made and the character of a wound received by a bullet from the same pistol, fired at some distance from that object?

Mr. KEPNER.—That is objected to, if the Court

(Testimony of Dr. S. C. Gibson.)

please, as incompetent.

The COURT.—The objection is sustained.

Mr. HAWKINS.—We desire an exception to the ruling of the Court.

Q. Doctor, from your experience in the practice of your profession, and from your observation in this examination, what is your opinion as to whether this wound was inflicted by the deceased, or by some one else?

Mr. KEPNER.—Same objection, if the Court please; it is incompetent.

Mr. HAWKINS.—If the Court please, there is not any question in this record, but what this was a gunshot wound.

The COURT.—No, but your question is wholly incompetent; it is not a subject of expert testimony at all.

Mr. HAWKINS.—There are a number of authorities which so hold, your Honor.

The COURT.—The jury is composed of sensible men; they are competent to form judgments and draw deductions; you can lay before the jury [144] the facts, and argue to them your theory as to how this wound was produced, and they will draw their conclusion, but it is not the subject of expert testimony to ask the witness, however well versed in surgery or medicine he may be, as to whether a given wound was more likely to have been produced upon a person by the individual himself, or a third person.

Mr. HAWKINS.—I would like to say this: Where the wound is internal, and where the ordinary man

(Testimony of Dr. S. C. Gibson.)

does not come in contact with it—the ordinary man a juror, and we have shown the location of this wound as it has been located by this doctor, that it is not governed by the same rules that apply to external wounds.

The COURT.—It is perfectly competent to ask this witness how such a wound might be produced, by what sort of instrumentality; whether it was a gunshot wound, or knife wound; and you can ask him whether, under ordinary conditions, a wound of that kind could be produced from some external source, without lacerating the lips or the tongue, or breaking the teeth, or things of that kind, and from those things the jury can draw the deduction you are asking this witness to state as an expert. It is not the subject of expert deduction.

Mr. HAWKINS.—I will take the benefit of an exception to the ruling.

Q. Doctor, will you state whether or not in your opinion, this wound which you have described could have been made by some instrument or gun, externally, and outside of the mouth, without injuring the lips, teeth or tongue, which you have testified were not injured?

Mr. KEPNER.—Same objection.

The COURT.—The objection is overruled.

WITNESS.—You mean from a distance outside the mouth?

Mr. HAWKINS.—Yes.

A. I can conceive of only two positions of the



(Testimony of Dr. S. C. Gibson.)

throat, tongue, lips and mouth that such a wound could be made.

The COURT.—(Q.) From an external source?

A. From an external source, and that would be in the act of yawning, or retching, or in that position of the throat or tongue (illustrating).

Q. Suppose that the mouth was open, in the act of hallooing. [145]

A. Well, yes; it might be that way; in that case the voice would be hoarse and low-pitched; I mean in that position (illustrating).

Q. In other words, it would be like a man in agony throwing his mouth open?

A. He would have to depress his tongue (illustrating).

Q. Yes, his tongue had to be depressed.

A. His tongue had to be depressed, because in examining the body I tried to look, to see the wound through the mouth by depressing the tongue, and I could not do so.

Mr. HAWKINS.—(Q.) Why could you not see the wound?

A. I could not depress the tongue.

The COURT.—(Q.) The tongue obstructed it?

A. Yes, I could not press it down far enough to see the wound, I tried it.

Mr. HAWKINS.—Now, I would like to ask this question, your Honor:

Q. What is your opinion as to whether the wound was inflicted by William C. Neasham himself, or by another?



(Testimony of Dr. S. C. Gibson.)

Mr. KEPNER.—That is objected to.

The COURT.—Do not repeat a question I have ruled on.

Mr. HAWKINS.—I just wanted to make the record, your Honor.

The COURT.—I have already ruled on it

Mr. HAWKINS.—We will take an exception.

Q. What size man was Mr. Neasham?

A. He was a large man.

Q. A strong powerful man physically?

A. Yes.

Mr. HAWKINS.—That is all.

Cross-examination.

Mr. KEPNER.—(Q.) Calling your attention to this skull that you are using to illustrate your testimony, with the protuberance which you say existed at the back part of the head, state to the jury where you commenced to remove the scalp from the skull.

A. I made an incision from one ear to the other, across there; made an incision right across there, and then peeled the scalp down (showing on skull).

Mr. HAWKINS.—May I just ask one more question, your Honor?

Q. Basing your testimony upon your experience and your examination of the deceased, Mr. Neasham, I ask you to state whether or not in your [146] opinion the wound was produced by a near shot, or one fired from a distance.

Mr. KEPNER.—That is objected to as incompetent; it has already been gone into.

The COURT.—There has been no foundation laid

(Testimony of Dr. S. C. Gibson.)

for him to express an opinion upon a question of that kind.

Mr. HAWKINS.—Notwithstanding it is admitted that he came to his death by a gunshot wound, your Honor?

The COURT.—That don't make any difference. You are asking a question now which involves the knowledge of this witness as to the effect of a gunshot wound produced from a distance as compared with one at close range; this witness has not disclosed any such experience.

Mr. HAWKINS.—He has testified he has been a physician for a number of years, and has had experience with gunshot wounds.

The COURT.—(Q.) Have you ever had any experience which would enlighten your mind as to the distinctive effect of what counsel characterizes as a near shot or a far shot?

WITNESS.—No, unless it is powder burned.

The COURT.—Yes, of course; that is a different thing. The objection is sustained.

Mr. KEPNER.—(Q.) Now you were stating about the manner in which you removed the scalp, and you told me the way to do it; is that the way you did it in this case?

A. I think so; that is the way I usually do it.

Q. Cut across the top of the head, and then pull the scalp down to the back? A. Yes.

Q. Did you remove any bullet from that wound?

A. No, sir.

Q. Didn't find any bullet at all?

(Testimony of Dr. S. C. Gibson.)

A. Found no bullet at all.

Q. Who was the brother-in-law you speak of, who objected to a thorough examination of the body?

A. Mr. Curnow.

Q. What Curnow?

A. The one that keeps a store there.

Q. What is his name?

A. I have forgotten his given name; I have known him a long time.

Q. You say he objected?

A. No, he didn't object to it; he requested me not to. [147]

Q. Not to what?

A. Not to cut the body any more than was necessary.

Q. Not to mutilate the features?

A. No, he didn't say the features—I don't think he did.

The COURT.—(Q.) He didn't make any objection to your opening up the skull to ascertain what actually was the cause of these wounds, did he?

A. No, he made the request of me, so I didn't go any further.

Mr. KEPNER.—(Q.) Simply requested you not to mutilate the body any more than you had to?

A. Not any more than I had to.

Q. After removing the scalp from the head, there was nothing to prevent you from finding a bullet?

A. No; I would have had to chisel in there.

Q. Stick your finger in the wound?

A. No, I would have to chisel.

(Testimony of Dr. S. C. Gibson.)

Q. I understood you to say the skull was fractured there?

A. Fractured there, yes; a stellated fracture, I said, and a small portion pushed out, but it was not loose.

Q. And you didn't remove any bullet, and didn't make any effort to find any? A. No.

Mr. KEPNER.—That is all.

**Testimony of Dr. S. K. Morrison, for Defendant.**

Doctor S. K. MORRISON, called as a witness on behalf of the defendant, after being sworn, testified as follows:

Direct Examination.

(By Mr. HAWKINS.)

Q. Your name is S. K. Morrison? A. It is.

Q. You live at Reno, Nevada? A. I do.

Q. How long have you lived there, Doctor?

A. Fourteen years.

Q. What is your profession?

A. Physician and surgeon.

Q. How long have you been so engaged?

A. Fourteen years.

Q. Are you a graduate of a school of medicine; if so, what? A. Cooper, San Francisco.

Q. What official position have you held in Washoe County, Nevada, if any? A. County physician.

Q. For what length of time?

A. Ten or twelve years.

Q. What has been the nature of your position as county physician during that period?

(Testimony of Dr. S. K. Morrison.).

A. Take care of the county poor and sick, do most of the autopsies, take care of all the accident cases, county jail, city [148] jail, insanities, court work.

Q. During this period in which you have been county physician, as stated, have you or not had to examine and take care of gunshot wounds?

A. Lots of them.

Q. From your experience in your profession, and study, and the actual experience you have had in gunshot wound cases, are you able to state whether there is any difference between a gunshot wound made by a near shot and one fired from a distance?

Mr. KEPNER.—That is objected to, if the Court please, as incompetent, irrelevant and immaterial, and assuming facts which are not in the record.

The COURT.—I don't think so. This witness has said that he has had to do with lots of gunshot wounds; if such a difference exists, why, of course, they are permitted to show it, because that is one of the very circumstances that could go before the jury.

Mr. KEPNER.—My point is this, there is no evidence before this jury of any gunshot wound; notwithstanding the admissions in the pleadings, there is no evidence here of a gunshot wound at all, or that the gunshot was fired.

The COURT.—This is a hypothetical question, and they have a right to put a hypothetical question on the theory of the evidence they conceive is sustained by it. It is very frequently the case where you can't prove a fact by direct, positive evidence,

(Testimony of Dr. S. K. Morrison.)

you have to resort to circumstances. The objection is overruled.

WITNESS.—A shot from a distance—

The COURT.—No, he is not asking you the difference. Read the question.

WITNESS.—Yes.

The COURT.—Well, do you know what the question is?

WITNESS.—He wanted to know the difference between a shot at near or far distance.

The COURT.—You are now answering his inquiry as to whether there is a difference; you say there is?

A. Yes. I have the privilege of explaining.  
[149]

The COURT.—No, you haven't now; he will ask you another question.

Mr. HAWKINS.—(Q.) Doctor, explain the difference between a wound produced by a gunshot, a near shot, and one fired from a distance?

A. When I answered the first question, I mean there is a marked difference when a gun is held against the body, because the bullet enters, and then—

The COURT.—(Q.) You mean against the body than when it is held at a distance?

A. Yes; when it is against the body the bullet enters, the gas is discharged, and the powder and so forth, blows in the soft tissues, leaving a jagged, large craterlike opening.

The COURT.—(Q.) That is when it is held against the body?



(Testimony of Dr. S. K. Morrison.)

A. Against the body. At a distance, the entrance wound almost universally is the size of the bullet. The matter of powder marks is not of much relevancy—

The COURT.—You have not been asked about powder marks.

WITNESS.—That is one of the differences.

The COURT.—Don't volunteer anything; it simply gives rise to objection, and I would have to strike it out.

Mr. HAWKINS.—(Q.) Doctor, you heard Doctor Gibson's testimony in describing the nature of this wound, and its location in the back part of the mouth of the deceased, did you? A. I did.

Q. Assuming that testimony to be true, state whether or not in your opinion, that wound could have been made by a gunshot fired at some distance from the mouth of the deceased?

Mr. KEPNER.—I object to that as incompetent.

The COURT.—The objection is sustained. There is no foundation for such a question here.

Mr. HAWKINS.—If the Court please, counsel said a while ago there was no proof that this death came from a gunshot wound; plaintiff has proved that herself.

The COURT.—I am not speaking of that. Your question does not involve any element of the magnitude of the missile that was fired by the gun, or anything else—it is just a gun; it might have been one caliber, or might have been another. That is the unfortunate thing growing out [150] of the fact

(Testimony of Dr. S. K. Morrison.)

that this autopsy was not carried to a point sufficient to fully demonstrate the instrumentality that produced the death, its caliber, and so forth, except by inference, which the jury must draw.

Mr. HAWKINS.—(Q.) Assuming the testimony of Doctor Gibson as true, particularly referring to the location of the wound, and the fact that the tongue, teeth and lips were not injured, would it in your opinion be possible to have inflicted that wound by a bullet fired from a thirty-two automatic pistol, with the pistol outside the mouth of the deceased?

Mr. KEPNER.—Objected to as incompetent.

The COURT.—I think so. The objection is sustained.

Mr. HAWKINS.—We ask for an exception.

Q. Could, in your opinion, a gunshot wound be inflicted upon the deceased, making the wound described by Doctor Gibson in his testimony, without injuring the tongue, teeth or lips?

Mr. KEPNER.—Same objection.

The COURT.—No, that is precisely the question that I allowed Doctor Gibson to answer; that is, whether under normal conditions, a wound of the character described could be produced—from external sources you mean, Mr. Hawkins?

Mr. HAWKINS.—Yes.

The COURT.—From external sources, upon the person of the deceased, without injuring the lips, tongue and the adjacent soft tissues, or the teeth?

WITNESS.—Shall I answer it?

The COURT.—Yes. He is asking whether it

(Testimony of Dr. S. K. Morrison.)

could, under ordinary circumstances.

A. No, it could not.

Mr. HAWKINS.—(Q.) Explain why it could not.

A. A wound of that description would have to be caused by—if it was done by a gun, by the gun being in the mouth, or the tongue would be pierced by anything coming in through the mouth, and possibly the lips; or the teeth knocked out; it would not be possible to have a wound of that kind otherwise, except in the act, as Doctor Gibson says, of yawning or gagging, and very improbable then; because even if the tongue [151] was out of the way, to get a wound coming from the outside—well, the mouth doesn't open so far as that (referring to skull used for illustration)—and the soft part is below that; you would not get the range, unless you hit the hard palate, and the hard palate was not hit.

Q. Assuming the testimony of Doctor Gibson as true—I will ask this question, your Honor, to make the record—what is your opinion as to whether or not the wound was inflicted by William C. Neasham himself, or another?

Mr. KEPNER.—Objected to as incompetent.

The COURT.—The objection is sustained. That is a deduction for the jury, which they are just as competent to draw as this witness.

Mr. HAWKINS.—We desire an exception to the ruling. That is all.

Cross-examination.

Mr. KEPNER.—(Q.) Doctor, were you present at this alleged autopsy? A. I was not.

(Testimony of Dr. S. K. Morrison.)

Q. You did not examine the body of William C. Neasham at all? A. Never saw it.

Q. Are you the examining physician for the New York Life Insurance Company? A. I am not.

Q. Have you ever been?

A. I was, I think, the first two years I was in Reno.

Q. Never been since then?

A. Never been since then.

Q. Then you haven't been physician for the New York Life for more than ten years?

A. More than ten years.

Mr. KEPNER.—That is all.

Mr. HAWKINS.—That is all of our witnesses, your Honor. I will now read the depositions that I started to read this morning.

Mr. KEPNER.—I would like to make an objection. I understand the purpose of this is to show nonpayment of premium, is that correct, Mr. Hawkins?

Mr. HAWKINS.—That is one thing in them.

Mr. KEPNER.—I think I might as well object now as to wait until after the reading has been commenced.

The COURT.—What is your objection?

Mr. KEPNER.—It is objected to, if the Court please, as incompetent, [152] irrelevant and immaterial, first, because the policy in evidence expressly acknowledges receipt of the premium, the first annual premium, and the defendant company is estopped to deny that fact, or contradict its solemn contract by parol; second, under the pleadings the purpose is to show that the contract or policy is void

from its inception, and this the company by its own express acknowledgment of the receipt of the first premium, is estopped from doing; third, the testimony sought to be introduced through this witness is hearsay; and, fourth, the testimony sought to be introduced violates the plain provisions of section 5419 of the Revised Laws of Nevada, which provides that no person shall be allowed to testify when the other party to the transaction is dead.

(Argument on the objection by Mr. KEPNER.)

Mr. HAWKINS.—May I interrupt a moment? We do not contend that the nonpayment of this premium forfeits the contract. The purpose of this is to show that in the event of self-destruction, we are only liable for the premiums paid, and we have alleged that they were not paid, hence, if not, we are not liable for anything.

The COURT.—That is what I gathered from counsel's statement yesterday.

Mr. KEPNER.—I wish to state right now that the plaintiff is suing for the amount of this policy, and if she is not entitled to that, she don't want anything; if she is not entitled to the amount of this policy, she don't want the first premium; and I am willing to enter into a stipulation now to waive any claim for the first premium.

The COURT.—In other words, if the verdict goes against you for the amount of the policy, you would scorn, I suppose, the other?

Mr. KEPNER.—Yes.

Mr. HAWKINS.—Does that go to the extent of



admitting the first premium was not paid?

Mr. KEPNER.—No, we can prove it was.

The COURT.—No, he is simply willing to concede, they do not ask a verdict for the alternative amount the forfeiture clause would allow them in case the jury should find that the deceased took his own life.

Mr. HAWKINS.—That is not very much of a concession. [153]

The COURT.—I think it is concession enough to lay out of consideration any evidence as to whether the premium was paid, and that is all you have under discussion. In other words, the attitude of plaintiff's counsel is that they waive any claim for the premium money paid, assuming it was paid, in the event that they are not held entitled to recover on the face of the policy. Is that right, Mr. Kepner?

Mr. KEPNER.—That is the exact situation.

The COURT.—So I do not see, upon the theory you stated, Mr. Hawkins, that you need bother with the evidence as to whether it was in fact paid or not.

Mr. HAWKINS.—Will your Honor give me a few minutes to run through with this deposition?

(A short recess is taken at this time.)

#### AFTER RECESS.

Mr. HAWKINS.—If the Court please, I find these depositions go to some other matters, and I would like to read them.

The COURT.—Very well, proceed.

Mr. HAWKINS.—The deposition of Seymour M. Ballard, page 2. (Reads.)

Mr. KEPNER.—We renew the objection. (Re-



ferring to objection on page 2 of deposition.)

The COURT.—Well, I will let it go in.

(Reading of deposition continued.)

Mr. KEPNER.—We renew the objection. (Referring to objection on page 3 of deposition.)

The COURT.—What is the materiality of this under the stipulation?

Mr. HAWKINS.—The object of that is to show this is a deferred payment, which was in violation of the agent's instructions, that the agent was not permitted to do the very thing which was done in this matter.

The COURT.—Well, how does this bear on the case, Mr. Hawkins?

Mr. HAWKINS.—I would rather the Court would rule, and I will take my exception. This matter comes to me from the New York attorney.

The COURT.—I am entitled to know your theory when I rule, because it may affect my judgment.

[154]

Mr. HAWKINS.—Well, my theory is that the application recites that the applicant could not do certain things, which were done here. It is recited that he cannot defer these payments.

The COURT.—But the policy, which you concede was delivered, recites as a part of the contract, that he had paid it.

Mr. HAWKINS.—Yes.

The COURT.—Then I cannot understand how this is material to any issue in the case.

Mr. HAWKINS.—As I say, this matter is put up to us.

The COURT.—Yes, I see what you mean, that they saw fit to include it in the management of the case there, and it leaves you in a more or less delicate position to concede that it is wholly irrelevant, which I am inclined to think it is, but I will allow it to go in for the present.

(Reading of deposition continued by Mr. HAWKINS.)

Mr. KEPNER.—I would like it to be understood that each objection stated in the deposition is considered as renewed at this time.

The COURT.—Very well. I will let it all be read.

Mr. KEPNER.—Subject to a motion to strike.

The COURT.—Yes.

Mr. HAWKINS.—We may save time, and I am willing that these depositions may be considered read, and have them introduced in evidence without taking the time to read them.

The COURT.—Very well, that is agreeable to me, and (to Mr. Kepner) you can move to strike them out. They may be considered read, and anything you deem material, can be called to my attention.

Mr. HAWKINS.—Very well, your Honor; under that, defendant rests.

Mr. KEPNER.—I move at this time, if the Court please, that the deposition of Seymour M. Ballard, Edward A. Anderson and Norman R. Haskell be stricken out as incompetent, irrelevant and immaterial.

(Testimony of F. P. Dann.)

The COURT.—Well, the question is wholly beside the necessities, because they have not been read to the jury, other than that which I have already indicated as immaterial. If they are read to the jury for any purpose, then you can renew your motion, but now they are not before [155] the mind of the jury at all, and can't affect them.

Mr. KEPNER.—Very well.

The COURT.—Have you any rebuttal?

Mr. KEPNER,—Yes, your Honor.

The COURT.—Well, proceed with it.

**Testimony of F. P. Dann, for Plaintiff (In Rebuttal).**

Mr. F. P. DANN, called as a witness by plaintiff, in rebuttal, after being sworn, testified as follows:

**Direct Examination.**

(By Mr. KEPNER.)

Q. What is your name?      A. F. P. Dann.

Q. Where do you reside, and what is your occupation?      A. Reno, Nevada; photographer.

Mr. KEPNER.—I ask that these three photographs be marked Plaintiff's Exhibits "D," "E" and "F," respectively, for identification.

(The photographs are marked as requested.)

Q. Look at the photograph which is marked for identification Plaintiff's Exhibit "D," and state whether or not you made that photograph.

A. I did.

Q. What does it represent?

A. It represents a cut.

Q. Whereabouts—what cut?

(Testimony of F. P. Dann.)

A. Near the Asylum, near Reno, Nevada.

Q. The cut where the body of William C. Neasham was found?

Mr. HAWKINS.—Does he know that?

Mr. KEPNER.—(Q.) Who was with you when this photograph was taken, if anyone?

A. Sheriff Burke, yourself, and the chauffeur of the machine.

Q. Is this a correct photograph of the view which it purports to represent? A. It is.

Q. In what direction was the camera situated when this photograph was taken?

A. It was situated, as I am looking at the picture, on my left, on the bank at my left.

Q. And the camera was pointing in what direction, what direction of the point of the compass?

A. The camera was pointing directly across the cut, toward the railroad; I am not certain about the points of the compass, or I would state. [156]

Q. Directly across the railroad?

A. Toward the railroad.

The COURT.—Across the cut, he said, toward the railroad.

WITNESS.—Across the cut, toward the railroad.

Mr. KEPNER.—(Q.) Look at the photograph marked Plaintiff's Exhibit "E" for identification, and state from what position that photograph was taken with reference to the cut?

A. This photograph was taken a short distance toward the Asylum, looking down the track toward the City of Reno.

(Testimony of F. P. Dann.)

Q. Calling your attention to these two individuals who appear there, who were they?

A. Yourself and Sheriff Burke.

Q. That is a correct view of the location which it purports to illustrate? A. It is.

Q. Calling your attention to Plaintiff's Exhibit "F" for identification I will ask you to state whether that is a photograph of the same cut which you have been speaking of. A. It is.

Q. Where was the camera stationed when Exhibit "F" was taken?

A. May I be allowed to correct a mistake that I made in relation to this photograph?

The COURT.—Certainly.

WITNESS.—This photograph ("D") was made standing up the cut; I said it was made standing on the bank, I should have said this one ("F"); I had the two confused; this one was made from the position I designated in my description of the first one.

The COURT.—(Q.) Then exhibit "D" was taken from up the cut toward the Asylum, looking down through the cut? A. Yes.

Mr. KEPNER.—(Q.) The camera was pointed—  
A. Toward Reno.

Mr. KEPNER.—We offer the three photographs in evidence, if your Honor please.

Mr. HAWKINS.—When were they taken?

Mr. KEPNER.—(Q) What date were those photographs taken?

A. It is written on the back of the photograph; I wrote it myself: "Made July 30, 1915."

(Testimony of Ray J. Cool.)

Mr. KEPNER.—That is all, Mr. Dann. I will by another witness show that the physical conditions were the same on the 30th of July as [157] they were on the 27th of February.

Mr. HAWKINS.—If that is shown, I have no objection to the photographs.

The COURT.—Yes, that would be proper, unless it is conceded.

Mr. HAWKINS.—I have no cross-examination.

**Testimony of Ray J. Cool, for Plaintiff (In Rebuttal).**

Mr. RAY J. COOL, called as a witness by plaintiff, in rebuttal, after being sworn, testified as follows:

Direct Examination.

(By Mr. KEPNER.)

Q. What is your name? A. Ray J. Cool.

Q. Where do you live? A. Reno, Nevada.

Q. Where did you live during the month of February, 1915? A. 607 North Virginia Street.

Q. With whom did you live?

A. Mr. and Mrs. Neasham.

Q. How long had you resided with the Neasham family? A. Since January 3d, 1914.

Q. January 30th, 1914? A. January 3d.

Q. You lived with them continuously, then, for about a year before the death of Mr. Neasham?

A. For thirteen months.

Q. Did you take your meals at the Neasham house, or did you just room there?

A. I roomed and boarded there.

Q. Was there any relation existing between you



(Testimony of Ray J. Cool.)  
and the Neasham family at the time?

A. Mr. Neasham was my guardian at the time.

Q. Did you see the body of William C. Neasham after his death?     A. I did.

Q. When and where?

A. Why, Sunday evening was the first time, I saw it in the undertaking parlors of Perkins and Gulling.

Q. Sunday evening, what day was that?

A. That was the 28th.

The COURT.—(Q.) You mean the Sunday evening following the tragedy?

A. Yes.

The COURT.—Then that would be the next day.

Mr. KEPNER.—(Q.) That would be the next day after he died?

A. Yes, sir.

Q. What, if anything, did you observe in his appearance, or in the appearance of the body?

A. I noticed a —     [158]

Mr. HAWKINS.—Just a minute. I object to that question. It is a matter after the body had been prepared by the undertakers.

The COURT.—Well, that does not appear.

Mr. HAWKINS.—May I ask a question at this time?

The COURT.—No, I don't think that is proper. You can interpose any objection you see fit, and you will have a chance to cross-examine this witness.

Mr. HAWKINS.—I object to the question on the ground it does not appear in what condition the body was; and it appearing that it was Sunday afternoon,

(Testimony of Ray J. Cool.)

or evening, after the death Saturday morning.

The COURT.—Your objection is addressed to the effect of the evidence, not its admissibility. They can't prove a chain of circumstances by one witness. If they prove by this witness that certain appearances or manifestations were on this body, then they can follow it up, and prove whether that was its condition when it was brought to the undertaking establishment.

Mr. HAWKINS.—Very well.

The COURT.—Of course, unless they do so, there would be nothing but the bald testimony of this witness as to what he saw on an occasion a day subsequent to the bringing of the body there, and it would not have the same effect it would if supplemented by evidence as to the condition being the same as when the body was brought in. It bears upon the question which is involved in issue here, that is, what probably was the cause of the death of the deceased. I suppose that is what it is directed to.

Mr. KEPNER.—Yes, your Honor.

The COURT.—Read the question.

(The reporter reads the question.)

The COURT.—What do you mean? That is very broad and general; it might refer to a condition of pallor which ensues upon death, or anything else. Do you mean with reference to physical injuries?

Mr. KEPNER.—Yes, but I didn't like to ask that question, without entrenching upon—

The COURT.—Here is a situation where the witness is being examined [159] as to a body sub-

(Testimony of Ray J. Cool.)

jected to physical injuries, that is, I mean this wound.

Mr. KEPNER.—(Q.) What did you notice on the body, particularly the head, with reference to wounds, scars, or dents in the head?

A. Over the right eye—

Mr. HAWKINS.—I want to object to that, because the plaintiff alleges the deceased came to his death by a gunshot wound.

The COURT.—That don't make any difference; he does not admit how that gunshot wound was received, does he?

Mr. HAWKINS.—No.

The COURT.—Then evidence tending to show other wounds upon the body would be circumstances from which it might be argued that the death wound was received in some encounter between himself and third parties. It only bears upon the subject; of course, it would be wholly irrelevant if he admitted the wound was received in the way that you claim.

Mr. KEPNER.—Answer the question.

A. Over the right eye, running from the forehead, is what appeared to be a dent, about an inch or an inch and a quarter long, in the shape of a crescent; and I placed my finger, little finger of my right hand, in it, in this dent, about the shape of that (indicating).

Q. How deep was it?

The COURT.—He says deep enough to lay his little finger in.

WITNESS.—Not to lay the entire finger in, but I

(Testimony of Ray J. Cool.)

should judge about around a quarter of an inch deep, something like that.

Mr. KEPNER.—(Q.) That would be substantially half the thickness of your finger?

A. Not hardly that.

Q. Just indicate on your forehead the location of that wound.

A. It was on the right side, made a sort of crescent shape, right around the edge of the hair.

Q. Had you ever seen that before?

A. No, sir; I had never seen it before.

Q. When did you last see William C. Neasham in his lifetime? A. Eight o'clock Saturday morning.

Q. On what occasion?

A. I saw him at the breakfast-table.

Q. Did you eat at the same table?

A. I did. [160]

Q. Where did he sit, and where did you sit?

A. He sat at the end of the table; there was one person between him and myself.

Q. Did you have any conversation with him that morning? A. General.

Q. What was his appearance and manner?

A. He seemed the same as he always was.

Q. What was his usual manner, as to being cheerful, or otherwise?

A. Why, he was always a pretty cheerful sort of a man, and I didn't notice any change in him that morning; he looked natural to me, the same as he always had been.

Q. Had you ever observed the dent which you

(Testimony of Ray J. Cool.)

speak of in the forehead prior to the time you saw it at the undertaking parlors?

Mr. HAWKINS.—He has answered that once before.

The COURT.—I think he did; I have the memorandum here “had never seen it before,” and he was speaking of this depression. You mean depression, perhaps. I would like to ask you, what was the general appearance of this, what you call dent; did it look as though it had been made with some instrument?

A. It looked to me like it had been hit with a pipe, or something of that shape.

Q. It was not cut?

A. No, it wasn't cut, it was pressed down.

Q. A depression? A. Yes, sir.

Mr. KEPNER.—You may cross-examine.

Cross-examination.

Mr. HAWKINS.—(Q.) Were you up, or where were you when Mr. Neasham came in that morning that you say you ate breakfast with him?

A. I didn't get up till about quarter to eight Saturday morning, and when I came downstairs he was helping around in the kitchen, Mrs. Neasham.

The COURT.—Helping what?

A. Helping Mrs. Neasham out in the kitchen, when I came down about a quarter to eight.

Mr. HAWKINS.—(Q.) You say he was your guardian? A. He was.

Q. Do you remember an accident that happened to Mr. Neasham a number of years ago, when a team ran away with him?

(Testimony of Ray J. Cool.)

A. No, I never knew of any previous accident.

Q. You said, I believe, that the skin was not broken at this point [161] that you have indicated?

A. No.

Q. Was the forehead discolored there at that place—black and blue?

A. Why, there seemed to be—there was a fine streak of blue in the bottom.

Q. Can you answer the question yes or no?

The COURT.—Yes, he said it seemed to him there was a fine streak of blue.

WITNESS.—Very fine, thread-like streak of blue in the bottom of the dent.

Mr. HAWKINS.—(Q.) What do you mean by a “fine streak of blue”?

A. Why, a fine blue line, is the only way I can describe it.

Q. You mean fine by being very indistinct?

A. Very light.

Q. And hard to see?      A. Yes.

Q. So if it was discolored at all, it was very slight, is that it?      A. Very slight, yes.

Q. You say you put your finger on the forehead?

A. I did.

Q. Did you feel of it there?      A. I did.

Q. Was the skin loose, did it slip around when you worked it?      A. No.

Q. Was it adhered to the bone?

A. It seemed to be, it was tight.

Q. It seemed to be adhered to the bone?

A. It did.



(Testimony of Ray J. Cool.)

Q. Your best judgment is that it was fastened to the bone?

A. As near as I could say, the way it felt.

Q. And did you work it around at all, Mr. Cool?

A. Why, I felt of it.

Q. You did what?

A. I felt of it; I felt of the skin at that place.

Q. When was this?

A. This was at home, on Monday morning.

Q. On Monday morning?     A. Yes.

Q. I thought you said a while ago that it was Sunday?     A. That is when I first noticed it.

The COURT.—He said that was when he first saw it at the undertaker's.

Mr. HAWKINS.—(Q.) Did you examine it at the undertaker's?     A. No, I just noticed it. [162]

Q. And you never made any examination until down at the house the next morning?

A. No, I never made no examination of it.

The COURT.—He means by examination, with your finger.

A. No, I never made any examination until it was taken to the house.

Mr. HAWKINS.—(Q.) And at that time you think you detected some slight lines of blue through there?     A. When I looked at it closely, yes.

Q. You had to look very closely to see those slight lines, did you?     A. Yes, it was very fine.

Q. Was the skin there a little bit softer than it was in other places?

A. Why, it seemed to be a little softer than it was

(Testimony of Ray J. Cool.)

any place else around close to there.

Q. There wasn't any line running up above the head; that is, a flesh line, as if the skin had been grown together, healing there? A. No.

Q. Just perfectly smooth and soft?

A. Except for a dent.

Q. And you are quite satisfied that the skin at that particular place was fastened to the bone, so that it would not slip around?

A. My own decision, I could not say whether it was fastened to the bone or not, but it was firm or solid at that point.

Q. What do you mean by being solid or firm at that point. A. Like it was stuck to something.

Q. Like it was stuck to something? A. Yes.

Q. At that time had the body been embalmed by the undertakers?

A. It had been at the undertaking parlors, yes.

Q. It had been embalmed?

The COURT.—(Q.) Do you know whether it had been embalmed?

A. No, I don't know whether they had the body embalmed or not.

Mr. HAWKINS.—(Q.) Did you feel the body anywhere else? A. No, I did not.

Q. Do you know the effect of embalming a body, as to making it so it may be indented by the pressure of the finger?

A. I didn't understand you.

The COURT.—(Q.) Do you know anything about the result of embalming a body at all?

(Testimony of A. A. Burke.)

A. No, I do not.

Mr. HAWKINS.—(Q.) What were you doing at the Neasham home?

A. I was attending the University of Nevada.

Mr. HAWKINS.—That is all. [163]

**Testimony of A. A. Burke, for Plaintiff (In Rebuttal).**

Mr. A. A. BURKE, called as a witness by plaintiff, in rebuttal, after being sworn, testified as follows:

Direct Examination.

(By Mr. KEPNER.)

Q. Where do you reside, Mr. Burke?

A. At the present time, in Carson City.

Q. What is your occupation?

A. At the present time I am employed by the Nevada Tax Commission.

Q. What has been your occupation during the past ten years?

A. Ten years ago I was special officer for Wells, Fargo & Company; and since that I have been chief of police in the city of Reno, sheriff of Washoe County, superintendent of state police in the State of Nevada, and inspector of state police. At the present time I am working for the Tax Commission.

Q. You say you were a special officer for Wells Fargo? A. Yes, sir.

Q. What were your duties? A. I was guard.

Q. How long were you chief of police of Reno?

A. A little less than four years, I think it lacked

(Testimony of A. A. Burke.)

about two months of being four years.

Q. During what dates? A. 1907 to 1911.

Q. And for what term were you sheriff of Washoe County? A. 1913 and 1914.

Q. What was your official position, if any, in February and March of 1915?

A. Superintendent of state police.

Q. Of the State of Nevada? A. Yes, sir.

The COURT.—(Q.) February and March a year ago? A. Yes, sir.

Mr. KEPNER.—(Q.) How long did you continue in that position, Mr. Burke?

A. About two months.

Q. And then what was your business.

A. Then I was inspector of the state police for about seven months.

Q. Were you inspector of the state police during the month of July, 1915? A. Yes, sir.

Q. Do you remember the circumstance of the death of William C. Neasham? A. Yes, sir.

Q. Did you know Mr. Neasham in his lifetime?

A. Yes, sir.

Q. As superintendent of the Nevada state police, did you make any investigation [164] of the circumstances surrounding the death of William C. Neasham?

Mr. HAWKINS.—When? I object to it unless it is located as to time.

Mr. KEPNER.—If he says he made any, I will fix the time. A. Yes.

Q. If so, when?

(Testimony of A. A. Burke.)

The COURT.—When?

A. I was at the place designated to me as the one where Mr. Neasham's body was found on the—I think it was the 27th of February, 1915.

Mr. KEPNER.—(Q.) That would be the day of his death.

A. I am not positive whether it was that day or not, but I can tell by referring to a diary I carry, the exact date.

Q. Have you the diary with you?

A. I think so, yes, sir.

The COURT.—(Q.) The memorandum made at the time? A. Yes, sir.

The COURT.—You may refresh your memory from it.

(Witness produces diary.)

A. It was on the 28th of February that I made this investigation, on a Sunday.

Q. Mr. KEPNER.—(Q.) Where was that place that you visited?

A. I visited the place that is known as the oil pit, near the Nevada State Insane Asylum; it is about, I should say, a mile, or a little over, east of Reno.

Q. Were you present on or about the 30th of July, 1915, when Mr. Dann took some photographs of that location? A. I was.

Q. I will ask you to state whether there had been any change in the physical conditions of that oil pit and surroundings, between the time you first visited the oil pit on the 28th of February, and the time you were there with Mr. Dann, on the 30th of July, 1915?

(Testimony of A. A. Burke.)

A. There was no material changes, excepting the natural growth of grass that would naturally grow in July, and what you would find there in February, was all I could see.

Q. Any grass in that location?

A. Some alfalfa, and some grass that grows along the ditches. [165]

Q. No grass on the railroad track, was there?

A. No grass on the railroad track.

Q. Calling your attention to Plaintiff's Exhibit "D" for identification, I will ask you whether you were present when that photograph was made? (Handing exhibit to witness.) •

A. I can't say positively this is the photograph that was made at that time, but there was one that looked like that; it is an exact counterpart of it, if it is not the same one.

Q. Calling your attention to Plaintiff's Exhibits "E" and "F" for identification, were you present when those photographs were taken?

A. I was present on the 30th of July when photographs were taken like these. I was certainly present when one was taken.

The COURT.—One of them has the picture of a couple of handsome men, were you one of those?

A. I don't think, your Honor, I am one of the handsome men, but I see my photograph here.

Mr. KEPNER.—(Q.) Who is the other handsome man?

A. The other handsome man looks like Thomas Kepner.



(Testimony of A. A. Burke.)

Mr. KEPNER.—I ask that these photographs be marked respectively Plaintiff's Exhibits "D," "E" and "F."

(The three photographs are marked respectively Plaintiff's Exhibits "D," "E" and "F.")

Q. Did you see the body of William C. Neasham?

The COURT.—After his death? A. Yes, sir.

Mr. KEPNER.—(Q.) Tell the Court what you observed.

The COURT.—When was it; find out when it was.

Mr. KEPNER.—(Q.) When did you see it?

A. I saw it on the 28th of February.

The COURT.—(Q.) You didn't see it the day that his body was brought in?

A. No, sir, not that day, I didn't see it until the next day—the next day after it was brought in. Assuming that it was brought in on the 27th, I saw the body on Sunday, the 28th.

Mr. KEPNER.—(Q.) What, if anything, did you observe in the way of wounds, or anything of that sort, in reference to the body?

A. Why, the undertaker showed me a wound in the mouth, by opening the mouth; that was all that I saw at that time. [166]

Q. Did you notice any other injuries of any character? A. I did not.

Q. What examination did you make, Mr. Burke, of the so-called gravel-pit, shown in Plaintiff's Exhibit "D"?

A. I examined the ground about the place for tracks, or for any indications I might find of other

(Testimony of A. A. Burke.)

people having been there, or any indication I might find of a struggle having taken place there.

Mr. HAWKINS.—(Q.) That was on the 28th?

A. On the 28th.

Mr. HAWKINS.—I object to the question on the ground it is incompetent, irrelevant and immaterial, being a whole day after the occurrence happened there.

The COURT.—That only goes to its weight, not to its admissibility. You may argue to the jury all these things that suggest themselves to your mind as weakening the testimony, but that only goes to its effect, not to its admissibility.

Mr. HAWKINS.—I would like to object to it as incompetent, irrelevant and immaterial at the present time, and it not being shown that the condition on the 28th was the same as the condition on February 27th.

The COURT.—Objection overruled.

Mr. HAWKINS.—Exception for the reasons stated.

Mr. KEPNER.—(Q.) Calling your attention to Plaintiff's Exhibit "E," and to the portion of the exhibit where the two men appear to be standing, I will ask you where that point is with reference to the oil pit or gravel pit, where the body was found?

A. The point where the two men were standing here is north of the oil pit, and across the railroad track from that.

Q. How far is it, approximately, between those two points?

(Testimony of A. A. Burke.)

A. I should say it is a hundred and twenty-five feet.

Mr. HAWKINS.—(Q.) How far?

A. About a hundred to a hundred and twenty-five feet.

Mr. KEPNER.—(Q.) Did you make any examination of that place on the 28th of February?

A. Yes, sir.

Q. What did you observe?

Mr. HAWKINS.—I object to the question on the ground it is incompetent, irrelevant and immaterial, and it not being shown it was the [167] same place and the same condition that existed on the day of the event being inquired about.

The COURT.—He don't have to show that under circumstances such as these. The objection will be overruled.

Mr. HAWKINS.—We ask the benefit of an exception.

The COURT.—Answer the question: What did you observe at that place—you mean where the men are standing, don't you, or are shown to be standing in that photograph?

Mr. KEPNER.—Yes.

A. I observed tracks in the ground there; the ground was soft, sandy ground, and had lately thawed out from being frozen; the ground was soft, and I observed tracks there, and observed a place where some one had been lying down.

Mr. KEPNER.—At this time, if your Honor

(Testimony of A. A. Burke.)

please, I will submit these photographs to the jury.

(The three photographs are shown to the jury.)

Mr. KEPNER.—You may cross-examine.

Cross-examination.

Mr. HAWKINS.—(Q.) I hand you the exhibits just referred to, and ask you to state which one you were referring to when you gave your last testimony about making an examination and what you found?

A. This is the one I referred to, and that is the place (indicating).

Mr. KEPNER.—(Q.) Which one is that?

A. This here, Exhibit "E."

Mr. HAWKINS. — (Q.) Referring to Exhibit "E" and to the place where the men are shown therein, how far is that place from the sand pit, where the body of Mr. Neasham was found?

A. I should say about a hundred feet, maybe a hundred and twenty-five.

Q. In which direction? A. North.

Q. Which direction on this Exhibit "E"?

The COURT.—Well, he don't mean which direction, he means which point on Exhibit "E"; the direction I suppose would be the same.

WITNESS.—Your Honor, that is the point that I have designated, that I have testified to as being the place where I examined for these tracks in soft ground. [168]

Q. That, you say, is north of the railroad?

A. That is north of what is known as the oil pit; it has been referred to here as the gravel and the sand pit, and I knew it as the oil pit.

(Testimony of A. A. Burke.)

Mr. HAWKINS.—(Q.) Now, will you designate on this Exhibit “E” the place where the pit is where the body of Mr. Neasham was found?

A. The pit was right in there. (Indicating on photograph.)

The COURT.—Just mark it with a cross, or with a “P,” or anything.

A. The pit would be right behind this pipe here; that pipe comes up out of the pit, right behind a pile of gravel that is there, sand and gravel. (Witness designates point on Exhibit “E” with a cross.)

Mr. HAWKINS.—(Q.) You have designated the place on Exhibit “E” where the pit was in which the body of Mr. Neasham was found, by a cross made with a lead pencil, which appears on top of a pile of material, and at the end of a line showing a pipe there, close to a house and some trees.

A. Yes; it is not close to the house; it is a long ways from the house, but the house shows in the photograph.

Q. And that point is across the railroad tracks from the point where you say you examined, and found some tracks in soft ground?

A. Yes, it is across the track; the pit is on the south side of the track, and this pit where I was examining the soft ground is on the north.

Q. Across the double or side-line track?

A. There is a main-line track and a siding there, it is across the double track.

Mr. HAWKINS.—I move to strike all the testi-



(Testimony of F. O. Chick.)

mony of the witness in reference to the examination made on February 28th, the day after the deceased was found there, and which examination was shown by the evidence to be from a hundred to a hundred and twenty-five feet from the place where the body was found, and across the railroad tracks, as being incompetent, irrelevant and immaterial, not tending to prove or disprove any issue in the case.

The COURT.—The motion is denied.

Mr. HAWKINS.—Exception for the reasons stated. That is all. [169]

**Testimony of F. O. Chick, for Plaintiff (In Rebuttal).**

Mr. F. O. CHICK, called as a witness by plaintiff, in rebuttal, having been sworn, testified as follows:

Mr. KEPNER.—(Q.) Mr. Chick, you were on the stand this morning, and you are still under oath. Speaking of the scar which you noticed on the forehead of the deceased, and which you described this morning, I will get you to state whether that was caused in moving the body from the oil pit to your parlors?      A. It was not.

Mr. KEPNER.—That is all.

**Testimony of Mrs. Myrtle Raymond, for Plaintiff  
(In Rebuttal).**

Mrs. MYRTLE RAYMOND, called as a witness by plaintiff, in rebuttal, after being sworn, testified as follows:

Direct Examination.

(By Mr. KEPNER.)

Q. Where do you reside, Mrs. Raymond?



(Testimony of Mrs. Myrtle Raymond.)

A. At present in Sacramento.

Q. What is your maiden name?

A. Myrtle Neasham.

Q. You are a daughter of Mr. and Mrs. William C. Neasham?      A. I am.

Q. Where were you in February, 1915?

A. I was teaching in Galena district, Washoe County.

Q. Galena District, Washoe County?      A. Yes.

Q. Where were you on the 27th day of February?

A. I was out in the district where I was teaching.

Q. Did you see the body of your father after his death?      A. I did.

Q. Where and when?

A. On Sunday evening, February 28, as nearly as I can remember.

Q. At the undertaking parlors?      A. Yes.

Q. What did you observe with reference to wounds or scars, or depressions, or dents on the head?

A. The only thing unusual I noticed was a depression above the right eye, next to the hair in the forehead; I noticed it when I first looked at the body; I had never seen it before.

Q. Will you just describe that depression that you speak of.

A. As nearly as I can remember, it was about an inch and a half long, and I remember placing my little finger in it, and asking my brother who was standing beside me, if he had ever seen it before.

Mr. HAWKINS.—I move that be stricken out.  
[170]

(Testimony of Mrs. Myrtle Raymond.)

The COURT.—Yes; what you asked your brother is merely hearsay. What you said has nothing to do with it; it is simply what you saw and did.

Mr. KEPNER.—(Q.) Will you just indicate—you have a hat on, I will ask you to indicate on my forehead, the location of that dent.

A. As nearly as I can remember, right across there (indicating on counsel's forehead.)

Q. And what was the depth of it when you laid your finger in it?

A. It was about one-eighth of an inch deep, as nearly as I can remember, so I could place my finger in it.

Q. When you placed your finger in it, what portion of your finger was in the depression?

A. About to the second joint.

Q. And how deep?

A. How deep was the depression?

The COURT.—She said it was about a quarter of an inch deep.

WITNESS.—You mean how deep did I lay my finger?

Mr. KEPNER.—(Q.) How far did you lay your finger in the dent?

A. About a quarter of my finger, I should imagine.

Q. And you never had seen that before?

A. Never.

Q. When did you last see your father in his lifetime?

A. In San Francisco, on Monday evening—let's see; February 22d.

(Testimony of Mrs. Myrtle Raymond.)

The COURT.—(Q.) That was the week before?

A. That was five days before.

Mr. KEPNER.—(Q.) Who was down to San Francisco with you on that occasion?

Mr. HAWKINS.—I don't see how that is competent, your Honor, or rebuttal; I object to it on the ground it is immaterial.

The COURT.—Well, you have introduced evidence here which you claim might furnish a motive for self-destruction; now if they can show that the conditions surrounding this man's life immediately prior and up to the date of his death were such as to at least negative any incentive or motive for self-destruction, it has some bearing on the question; they are circumstances which go to this jury from which they will find what the fact is as to the issue that is to be submitted to them. Answer the question.

(The reporter reads the question.) [171]

A. My mother and my father, and my brother and Mr. Cool.

Mr. KEPNER.—(Q.) Which brother?

A. Edward.

Q. Did you all go there together, to San Francisco?

A. My mother and my father and I did; my brother and Mr. Cool went with a football team that was playing in California.

Q. What was the occasion of your going down there? A. The opening of the Exposition.

Q. The opening of the San Francisco Exposition?

A. Yes.

(Testimony of Mrs. Myrtle Raymond.)

Q. Do you know how long your father and mother were there at the Exposition?

A. We attended the opening of the Exposition on February 20th, and I was with them—that was Saturday, and I was with them until Monday evening, when I returned to Nevada.

Q. What was your father's conduct during that time?      A. Very cheerful and happy.

Q. And your father and mother, what were their relations to each other during that time?

A. The best that could be imagined.

Q. What have been the relations between your father and mother as you have observed them?

A. Always since I can remember, as happy as possible.

Q. Always happy?      A. Yes.

Mr. KEPNER.—You may cross-examine.

Cross-examination.

Mr. HAWKINS.—(Q.) Mrs. Raymond, you testified during the coroner's inquest, did you?

A. I did.

Q. I will ask you if at that time you were asked the following questions, and returned the following answers:

“Q. Did you know of any trouble that might have been troubling Mr. Neasham? A. Nothing definite; there are things that we think we can see, but nothing definite that we could seem to know that could put him into such a state. Q. Those were business worries? A. Yes.” Were you asked those questions, and did you return those answers?

(Testimony of Mrs. Myrtle Raymond.)

A. I don't remember a thing about it, at the present time I don't remember either the questions or the answers.

Q. You don't remember?      A. I don't remember.

The COURT.—When was the inquest held? [172]

Mr. HAWKINS.—March 1st, 1915.

The COURT.—That was a day or two after the death?

Mr. KEPNER.—That was the Monday following.

The COURT.—(Q.) Why do you mean you don't remember, were you in a state of distress?

A. I suppose that I was.

Mr. HAWKINS.—(Q.) Have you been talked with by plaintiff's attorney about this testimony that you gave before the coroner's inquest, or as reported to have been given by you before the coroner's inquest?      A. He—

Q. Just answer yes or no?      A. Yes.

Mr. HAWKINS.—That is all.

Redirect Examination.

Mr. KEPNER.—(Q.) What was the condition of your mother and the other members of the family at the time of the inquest?

Mr. HAWKINS.—I object to the question as incompetent, irrelevant and immaterial.

The COURT.—I don't see the materiality of that myself. Why?

Mr. KEPNER.—Simply to show the mental condition and mental strain and worry that they were under.

The COURT.—If they were under examination,

(Testimony of James Edward Neasham.)

and had given an answer such as the witness has here, that she didn't remember her testimony before the coroner's jury, the inquiry would be pertinent, because we all know circumstances like that are calculated to disturb the mental equilibrium of people, and they don't remember; but they are not under examination, it is only the witness here.

Mr. KEPNER.—That is all.

Mr. HAWKINS.—May I ask this question:—(Q.) You may have been asked those questions, and returned those answers?      A. I may have.

Q. You simply don't remember. That is all.

Mr. KEPNER.—That is all. [173]

**Testimony of James Edward Neasham, for Plaintiff  
(In Rebuttal).**

Mr. JAMES EDWARD NEASHAM, called as a witness by plaintiff, in rebuttal, having been sworn, testified as follows:

**Direct Examination.**

(By Mr. KEPNER.)

Q. You were on the stand the other day, Mr. Neasham?      A. Yes, sir.

Q. And you are still under oath. Did you see the body of your father after his death?      A. I did.

Q. When and where?

A. At my home, I think it was the following Monday.

Q. Did you see the body at the undertaking parlors?      A. No.

Q. You saw the body at your home?      A. Yes.



(Testimony of James Edward Neasham.)

Q. That would be on Monday following the day of his death?     A. Yes.

Q. What did you observe in the way of wounds on the body?

A. I noticed an unusual scar on his forehead.

Q. Just describe it.

A. It was about an inch and a half long and extending upward and backward, from about the center of the right side of the forehead, it extended back into the hair.

Q. How deep a depression was it?

A. About, oh, maybe three-sixteenths of an inch.

Q. And about an inch and a half long?

A. Yes, sir.

Q. You say that was an unusual scar, what do you mean by that?

A. Well, I had never noticed it before.

Q. Never had seen it before?     A. No.

Mr. KEPNER.—You may cross-examine.

Mr. HAWKINS.—No cross-examination.

**Testimony of Nicholas Curnow, for Plaintiff (In Rebuttal).**

Mr. NICHOLAS CURNOW, called as a witness by plaintiff, in rebuttal, after being sworn, testified as follows:

**Direct Examination.**

(By Mr. KEPNER.)

Q. What is your name?

A. Nicholas Curnow.

(Testimony of Nicholas Curnow.)

Q. Did you know William C. Neasham in his lifetime? A. Yes, sir.

Q. Was he any relation of yours?

A. Brother-in-law.

Q. Mrs. Neasham, the plaintiff in this suit, is your sister? A. Yes, sir.

Q. How well did you know William C. Neasham in his lifetime? A. How well? [174]

Q. Yes.

A. I knew him thoroughly, been with him for years, off and on.

Q. Did you ever cut his hair? A. Yes, sir.

Q. How frequently?

A. One summer, I think it was 1913, I cut it every time it required cutting, all summer; and I cut it as early as 1894; frequently from that time, every time we were together.

Q. Then you cut his hair for twenty years, more or less? A. That is off and on; yes, sir.

The COURT.—(Q.) I thought you cut his hair all one summer?

A. Yes.

Q. But you had cut it during a period of twenty years at different times? A. Yes.

Mr. KEPNER.—(Q.) Where did you live during the summer of 1913?

A. At Buffalo Meadows.

Q. Was Mr. Neasham living at Buffalo Meadows during that time? A. Most of the time, yes, sir.

Q. You were living there, too? A. Yes.

Q. Where is Buffalo Meadows?

(Testimony of Nicholas Curnow.)

A. It is about one hundred and three miles due north of Reno, a ranch out there owned by Ward and Smith.

Q. Did Mr. Neasham have any scar on the right side of his forehead?     A. No, sir.

Q. Never did have a scar there?

A. Speak a little louder; I am hard of hearing.

The COURT.—He asked you if Mr. Neasham had a scar you had ever observed on the right side of his forehead?     A. He had not, no, sir.

Mr. HAWKINS.—Just a minute. I want to object to the question as incompetent, irrelevant and immaterial, and move the answer be stricken.

The COURT.—You may consider the objection was interposed before the answer. What is the objection?

Mr. HAWKINS.—On the ground it is immaterial in this record, under the pleadings and under the proof made by plaintiff, as to how the deceased came to his death; it does not prove or tend to prove any issue.

The COURT.—The objection is overruled. It has a bearing; if the [175] jury find that this injury never existed there before, they have a right to take it into consideration in determining the manner of the deceased's death.

Mr. HAWKINS.—Exception.

Mr. KEPNER.—(Q.) Did you see the body after death?     A. No, sir.

Q. Have you had any experience with firearms?

A. Yes, sir.

(Testimony of Nicholas Curnow.)

Q. Familiar with the workings of the Savage automatic pistol?      A. I am—all automatics.

The COURT.—(Q.) All automatics?

A. All automatics made in the United States.

Mr. KEPNER.—(Q.) Is it possible to fire a Savage automatic pistol if it is in proper working order, and leave a shell in the chamber?      A. It is not.

Mr. HAWKINS.—I object to the question on the ground there is nothing in the record in reference to it, no bearing on it, and incompetent, irrelevant and immaterial.

The COURT.—What do you claim as to the relevancy of it?

Mr. KEPNER.—Why, there is a contradiction of the record, if the Court please; at the inquest Mr. Ferrell's testimony was that there was a shell in the chamber and that the safety was on the trigger; to-day he testified differently.

Mr. HAWKINS.—Mr. Ferrell testified that he never gave any such testimony.

The COURT.—The mere asking him of those questions from a purported record, don't make that record verity, nor introduce it in evidence, but they have a perfect right by verifying that as the evidence given at the coroner's inquest to introduce it here in rebuttal of the witness' statement, because that is one of the most usual and ordinary methods of impeachment, to show that at some time the witness has made statements inconsistent with his present testimony. I will let the answer stand.

Mr. KEPNER.—(Q.) Now I will get you to state,

(Testimony of Nicholas Curnow.)

Mr. Curnow, whether it is possible to fire a Savage automatic pistol with the safety on?

Mr. HAWKINS.—Same objection.

The COURT.—Answer the question. [176]

A. It is not; it is impossible to fire it with the safety on with the gun in perfect working order.

Mr. KEPNER.—That is all.

Cross-examination.

Mr. HAWKINS.—(Q.) You say you are a relative of Mrs. Neasham? A. Yes, sir.

Q. A brother? A. Brother to Mrs. Neasham.

Q. And you have known Mr. Neasham how long?

A. How is that?

Q. How long did you know Mr. Neasham?

A. Mr. Neasham?

Q. Yes.

A. I think it was '93 or '94—'93, I think it was.

Q. When was he married to your sister?

A. I wasn't present at the marriage; I think it was in '91.

Q. Do you remember the time that Mr. Neasham had a team run away with him?

A. I might have heard about it, but I wasn't present at the time it happened.

Q. And one of his children was killed in the runaway? A. Oh, that was no runaway.

Mr. KEPNER.—I object to that, if the Court please.

The COURT.—How is that?

A. That was no runaway.

(Testimony of Nicholas Curnow.)

Mr. HAWKINS.—(Q.) That happened in connection with a team, didn't it?      A. How is that?

The COURT.—The witness is a little hard of hearing; you will have to speak up a little.

Mr. HAWKINS.—(Q.) That circumstance happened with Mr. Neasham in connection with a team?

Mr. KEPNER.—Which circumstance?

Mr. HAWKINS.—The team ran away.

WITNESS.—You want to know if the team killed the little girl?

Q. I want to know about that event; yes.

A. I think it did happen that way; I wasn't present at the time.

Q. When was that?

A. That is impossible for me to say, just the date.

Mr. KEPNER.—Your best recollection will do.

A. Along in 1906 or 1907, somewhere along there, wasn't it. I ain't [177] sure just when it was.

The COURT.—What is the idea of examining a witness who wasn't present and knows nothing about it?

Mr. HAWKINS.—If he doesn't know he can say so.

The COURT.—He has told you so.

Mr. HAWKINS.—(Q.) Do you know whether Mr. Neasham was injured in that matter or not?

A. He was not.

Q. Do you know of another occurrence where he was injured in connection with a team?

A. No. The only injury I know that he received with a horse, a horse struck him, and cut him here



(Testimony of Nicholas Curnow.)

under the lip; he had a scar there from being struck by a horse.

Q. When did he get that injury?

A. That was before I knew him; he informed me that was the way he got the scar there.

Mr. HAWKINS.—That is all.

Mr. KEPNER.—That is all. If your Honor please, I offer in evidence lines 15 to 28, inclusive, page 7, of the duly authenticated transcript of proceedings entitled “In the Matter of the Inquisition Upon the Body of William C. Neasham, Deceased,” which under the statute, was filed in the office of the clerk of the Second Judicial Court of the State of Nevada, in and for the County of Washoe, and by him duly certified as being a true and correct copy of that transcript; the matter referred to being a portion of the testimony of Charles P. Ferrell, given at the inquest.

Mr. HAWKINS.—I object to the offer on the ground it is not signed by the witness; and on the further ground it is incompetent, irrelevant and immaterial.

The COURT.—This is simply for the purpose of impeachment, I suppose?

Mr. KEPNER.—That is all.

The COURT.—You may read that part that relates to the testimony you offer; it is only those parts you asked him about, and it is purely for impeachment. Gentlemen of the jury, you will bear in mind, if I should neglect to state to you when I come to charge you, that this evidence is not introduced as

(Testimony of Nicholas Curnow.)

being the truth of what may have been there represented, but simply as bearing upon the question whether the [178] witness under examination has at some other time testified differently from what he testified here; that is the only purpose; it is for the purpose as we term it in law, of impeachment; in other words, to lay before a jury so that they may determine how far a witness is to be believed, because that is their province.

Mr. HAWKINS.—Your Honor overrules the objection?

The COURT.—Yes.

Mr. HAWKINS.—I desire an exception.

Mr. KEPNER.—I read the portion of the testimony of Charles P. Ferrell appearing on page 7 of the transcript, beginning with line 15: (Reads:) “Q. By Mr. Lunsford: Did you take the gun? A. Yes, sir, I picked the gun up. Q. It is here now? A. Yes, sir. This is the gun. Q. Is this in the same condition as it was? A. No; I removed the shell from the chamber, and there are nine shells in the magazine. Q. Is it in the same condition? A. It is in the same condition with the exception that the safety was on the trigger. I took the shell out of the chamber, and there is nine in the magazine. Q. You have the empty cartridge now? A. Yes.”

Mr. KEPNER.—That is the portion which I read to the witness, your Honor.

**Testimony of W. J. Harris, for Plaintiff  
(In Rebuttal).**

Mr. W. J. HARRIS, called as a witness by plaintiff, in rebuttal, after being sworn, testified as follows:

**Direct Examination.**

(By Mr. KEPNER.)

Q. Mr. Harris, where do you live?      A. Reno.

Q. What is your occupation?

A. Vice-president and cashier of the Farmers & Merchants' National Bank.

Q. How long have you been in that position approximately; were you occupying that position in February, 1915?

A. Oh, yes, since about 1903.

Q. Did you know William C. Neasham in his lifetime?      A. I did.

Q. How well did you know him?

A. Well, I would meet him occasionally, as he had business in the bank. [179]

Q. Did he have an account at your bank, a checking account?      A. Yes, sir.

Q. What was the condition of the account on February 27th, 1915?

A. (Producing memorandum.) He had a credit balance in the bank on that date of \$844.06.

Q. That amount was subject to check, was it?

A. Yes, sir.

Q. When did you last see Mr. Neasham in his lifetime?      A. It was the day before his death.

(Testimony of W. J. Harris.)

Q. And what was his manner and appearance at that time?

A. Perfectly normal, the same as he had always been.

Q. You noticed nothing unusual in his manner or appearance?      A. Nothing whatever.

Mr. KEPNER.—Cross-examine.

Cross-examination.

Mr. HAWKINS.—(Q.) Was or not Mr. Neasham indebted to your bank on February 27th, 1915?

A. Yes, sir.

Q. In what sum?

A. We had a mortgage on his ranch of fifteen thousand dollars.

Q. The bank held a note and mortgage on the ranch for the sum of fifteen thousand dollars?

A. Yes, sir.

Mr. HAWKINS.—That is all.

Redirect Examination.

Mr. KEPNER.—(Q.) When was that loan made, Mr. Harris, what was the date of it?

A. It was not due; it was dated June 23d, 1914, and due June 23d, 1916.

The COURT.—(Q.) The present year?

A. The present year; yes, sir.

Mr. KEPNER.—(Q.) Then there was nothing due from William C. Neasham to the bank on February 27th, 1915?

A. No, sir. I will state further to the question of Mr. Hawkins, he owned another note at that time,

(Testimony of W. J. Harris.)

secured by an assignment of a chattel mortgage, that has since been paid; but on this ranch mortgage, fifteen thousand dollars, not due until June of this year.

Mr. KEPNER.—I think that is all. [180]

Recross-examination.

Mr. HAWKINS.—(Q.) What was the amount of that other indebtedness which you speak of?

A. \$3,250.00.

Q. You say that has since been paid?

A. Yes, sir.

Q. Paid since the death of Mr. Neasham?

A. Yes, sir; it was secured by—

Mr. HAWKINS.—That is all.

Mr. KEPNER.—I submit the witness can finish his answer.

Mr. HAWKINS.—Certainly, if he wishes to.

The COURT.—Proceed.

WITNESS.—This other loan was an assignment of a chattel mortgage that he had upon some sheep, secured by double the amount; and when it was due it was promptly taken up.

The COURT.—(Q.) It was not a chattel mortgage given by him, then? A. No.

Mr. HAWKINS.—(Q.) As I understand, the bank had loaned him money, and he had secured it by an assignment of this chattel mortgage?

A. We held him responsible, as well as another.

The COURT.—(Q.) It was another's debt?

A. It was another's debt, secured by double the amount.

(Testimony of W. J. Harris.)

By the COURT.—(Q.) Mr. Harris, what is the habit of your bank as to loans on country real estate, about what percentage would you loan?

A. Fifty per cent.

Q. And do you know of your own knowledge whether or not this mortgage on Mr. Neasham's ranch represented about the same proportion of value?

A. Yes, sir, our committee appraised it at about thirty thousand dollars.

Q. The ranch was worth about thirty thousand dollars? A. Yes.

Q. As far as his relations with you, the obligation he owed you, he was not what you would call insolvent?

A. Not by any means; no, sir.

Mr. HAWKINS.—(Q.) Do you know whether that real estate has been sold since Mr. Neasham's death or not.

A. It has not been sold; no, sir.

Mr. HAWKINS.—That is all.

Mr. KEPNER.—That is all. [181]

**Testimony of Harry B. Wood, for Plaintiff  
(In Rebuttal).**

Mr. HARRY B. WOOD, called as a witness by plaintiff, in rebuttal, after being sworn, testified as follows:

Direct Examination.

(By Mr. KEPNER.)

Q. Where do you reside, Mr. Wood?



(Testimony of Harry B. Wood.)

A. In Reno.

Q. What is your occupation?

A. Life insurance agent.

Q. For what company?      A. New York Life.

Q. Did you have anything to do with writing the insurance on Mr. Neasham's life?

A. In a sense, I did; yes, sir.

Q. What was it?

A. I obtained certain information about Mr. Neasham, which made me suppose that it would—

Mr. HAWKINS.—I object to that.

The COURT.—Just state what you did.

A. Supposing it were possible to write some insurance for Mr. Neasham, and being at that time in sort of a partnership with a man who came up here from San Francisco to work with me, he and I went to see Mr. Neasham; this Mr. Pearson, however, completed the transaction with Mr. Neasham, and sold him a ten thousand dollar life insurance policy early in July of 1914.

The COURT.—(Q.) Do you mean you approached Mr. Neasham in the matter?

A. I did not, I took this other man to him.

Q. I mean that the approach was from the insurance side, he didn't seek the insurance?

A. Absolutely so; yes, sir.

Mr. KEPNER.—(Q.) Look at the document which I hand you, which is marked Plaintiff's Exhibit "B"—

Mr. HAWKINS.—We will admit that is the policy that was referred to.

(Testimony of Brewster Adams.)

Mr. KEPNER.—The policy that was written as a result of his negotiations in the matter?

Mr. HAWKINS.—As a result of Mr. Pearson's negotiations.

Mr. KEPNER.—All right. That is all.

Mr. HAWKINS.—No cross-examination. [182]

**Testimony of Brewster Adams, for Plaintiff  
(In Rebuttal).**

Mr. BREWSTER ADAMS, called as a witness by plaintiff, in rebuttal, after being sworn, testified as follows:

**Direct Examination.**

(By Mr. KEPNER.)

Q. What is your name?      A. Brewster Adams.

Q. Where do you live?      A. In Reno.

Q. What is your occupation?      A. Clergyman.

Q. Of what denomination?      A. Baptist church.

Q. How long have you been in Reno, Mr. Adams?

A. Seven years, approximately.

Q. Did you know William C. Neasham in his lifetime?      A. I did.

Q. Are you acquainted with Mrs. Neasham, plaintiff in this action?      A. Yes, sir.

Q. How long had you been acquainted with the Neasham family prior to February 27th, 1915?

A. Why, I should say approximately three or four years I have known them.

Q. How intimately acquainted were you with the Neasham family?

A. I think quite intimately; the children attended

(Testimony of Brewster Adams.)

our Sunday school, and the family attended our church somewhat, and I visited at the home of Mr. Neasham, and I knew him; he was a member of the same order I was, and I often saw him in the lodge, and I felt I was very well acquainted with him.

Q. Did you ever stay overnight at the Neasham house?

A. I stayed at the ranch-house at Buffalo Meadows.

Q. How frequently?

A. I simply went out there for a hunting trip, and stayed there, I think it was two nights, at their home.

Q. When was that?

A. It was three years ago, it will be three years this summer.

Q. Three years this summer?      A. Yes.

Q. That would be during the summer of 1913?

A. Yes.

Q. State what the treatment of William C. Neasham for his family was as you observed it, and what their treatment of and regard for him was, as you observed it.

A. Well, I always have felt that Mr. Neasham's family— [183]

Mr. HAWKINS.—I object to the feeling of the witness.

The COURT.—It is a form of expression of the witness to express what he deemed the relations.

WITNESS.—Well, I have thought—that is better.

Mr. HAWKINS.—I will object to that as not responsive to the question.

(Testimony of Brewster Adams.)

The COURT.—Counsel does not wish you to think; just state your judgment of their relations from what you saw.

A. My judgment of the family was that it was a perfect family life in every sense I have ever seen; Mr. Neasham's regard for his family was very—

Mr. HAWKINS.—I object to that as a conclusion of the witness.

The COURT.—(Q.) Well, you mean from his manner?

A. Well, if I could give facts; I know that Mr. Neasham when I would see him when his family was away, was always talking about them; he bought an automobile and took his family away out to Buffalo Meadows—told me that he could not live without them.

Mr. HAWKINS.—I object to that; I don't think that is proper.

The COURT.—No, I would not tell anything he told you; it is not competent unless it was told you in the presence of the Insurance Company, I think.

WITNESS.—This is quite a considerable Insurance Company—it may be.

Mr. KEPNER.—Proceed.

The COURT.—I think he has finished.

Mr. KEPNER.—Had he finished?

The COURT.—He told you what his judgment was from his knowledge of them, as to the relation of the family; that is all you can call for.

Mr. KEPNER.—(Q.) Anything else that you observed as to their relations to each other?

(Testimony of Thomas H. Curnow.)

A. Always friendly, all that I have ever seen.

Mr. KEPNER.—That is all.

Mr. HAWKINS.—(Q.) The relations existing between Mr. Neasham and his family were friendly, as far as you know?     A. Absolutely, yes, sir.

Mr. HAWKINS.—That is all.

(The Court admonishes the jury, and an adjournment is taken until Friday, March 9th, 1916, at 10 o'clock A. M.)     [184]

Friday, March 9th, 1916.

Court convened—10 o'clock A. M.

(All parties present.)

**Testimony of Thomas H. Curnow, for Plaintiff  
(In Rebuttal).**

Mr. THOMAS H. CURNOW, called as a witness by plaintiff, in rebuttal, after being sworn, testified as follows:

**Direct Examination.**

(By Mr. KEPNER.)

Q. Where do you reside, Mr. Curnow?

A. In Reno, Nevada.

Q. What is your business?     A. Merchant.

Q. Whereabouts?

A. 223 Virginia Street, Reno.

Q. What relation are you to the plaintiff in this action?     A. I am a brother.

Q. Did you know William C. Neasham in his lifetime?     A. I did.

Q. How long had you known him?

A. About twenty-five or six years.

(Testimony of Thomas H. Curnow.)

Q. Where were you on the 27th day of February, 1915? A. In my place of business in Reno.

Q. Did you see the body of William C. Neasham on that date? A. I did.

Q. Whereabouts?

A. At the Perkins-Gulling undertaking parlors.

Q. Will you state how soon after it was brought to the undertaking parlors?

A. Possibly half or three-quarters of an hour.

Q. Were you there when Doctor Gibson was there?

A. I was.

Q. Were you there when he performed what he called an autopsy?

A. No, I wasn't there at that time.

Q. Were you there before that? A. Yes.

Q. State what you observed on the body at that time with reference to wounds, or dents, or bruises, or anything of that sort.

A. Well, I saw on his right forehead, just about the hair-line, was a dent, apparently the size of a lead pencil, or a little larger, and possibly two inches to three inches long, and right in the bottom of this dent there was a blue mark, looked like coagulated blood under the skin.

Mr. HAWKINS.—I object to the statement as to what it looked like, and move it be stricken.

The COURT.—No, that is his statement of what it looked like, that is always a question of fact—how did it look to you? [185]

Mr. KEPNER.—(Q.) Just indicate on your fore-



(Testimony of Thomas H. Curnow.)

head, Mr. Curnow, the location of that mark?

A. Right along, from right along about that location. (Indicates on forehead.)

Mr. HAWKINS.—(Q.) Will you indicate that so it will go in the record, state it in words.

A. It ran from the upper forehead toward the ear, along close to the hair line.

Mr. KEPNER.—(Q.) Did you ever observe that mark before? A. I never did.

Mr. KEPNER.—Cross-examine.

Mr. HAWKINS.—(Q.) Was that a scar which you saw there at that time, Mr. Curnow?

A. It was not a scar; no, it was a denture.

Q. What?

A. It was just an indenture, bruised in.

Mr. HAWKINS.—That is all.

**Testimony of Dr. J. A. Ascher, for Plaintiff  
(In Rebuttal).**

Doctor J. A. ASCHER, called as a witness by plaintiff, in rebuttal, after being sworn, testified as follows:

**Direct Examination.**

(By Mr. KEPNER.)

Q. Your name is J. A. Ascher? A. It is.

Q. You are a doctor? A. Yes, sir.

Q. You live at Sparks? A. Yes, sir.

Q. How long have you been a doctor?

A. It will be nineteen years, about this time—just about nineteen years.

Q. Did you know William C. Neasham in his lifetime? A. I did.

(Testimony of Dr. J. A. Ascher.)

Q. Did you see his body after his death?

A. I did.

Q. Where and when?

A. At his home, I think the day after his death, I am not positive—it was at his home.

The COURT.—It is conceded that he died on Saturday, the 27th day of February, 1915, and the evidence tends to show that the body was not taken to his home from the undertakers until Monday, I think.

Mr. KEPNER.—Yes.

Q. So it was after the body had been taken home that you saw it?

A. It was; it was a day of two afterwards, I don't remember the time.

Q. By a day or two afterwards, you mean a day or two after his death? A. Yes. [186]

Q. Did you observe anything unusual in the appearance of the body?

A. I did not, until my attention was called to certain things.

Q. What was your attention called to?

A. My attention was called to a bruise or scar in the forehead on the left side.

Q. Did you express an opinion at that time?

Mr. HAWKINS.—I object as incompetent, irrelevant and immaterial.

The COURT.—Yes, the objection is good. You can ask him what he saw, and what his judgment was as a surgeon and physician, but not what opinion he expressed.

Mr. KEPNER.—(Q.) What was your judgment,

(Testimony of Dr. J. A. Ascher.)

Doctor, from what you observed, especially with reference to this dent on the forehead, as to the force of the blow which would have produced a dent of that character?

Mr. HAWKINS.—I object to the question on the ground it is incompetent, irrelevant and immaterial.

The COURT.—I think the inquiry here is his judgment as to whether or not it was of recent origin—the appearance that he saw there. If it was of recent origin, then you may be permitted to ask him what in his judgment would produce such an injury.

Mr. KEPNER.—I think, if your Honor please, we have sufficiently shown that the dent was of recent origin.

The COURT.—You have not shown it by this witness.

Mr. KEPNER.—Not by this witness, no; and I don't know that I can show it by this witness; that is not the purpose for which this witness was called; the purpose for which I called this witness was to show, assuming that the dent was of recent origin, what would be the cause of it.

The COURT.—Oh, that is a different thing.

Mr. KEPNER.—(Q.) Doctor, assuming that the dent to which your attention was called was of recent origin, assuming that it had been caused on the day of the death of the deceased, and before his death, what, in your judgment, would have been the force of the blow which caused that dent?

Mr. HAWKINS.—I object to that on the ground it is admitted by the pleadings, and the plaintiff's

(Testimony of Dr. J. A. Ascher.)

proof has established the fact, that the death was caused by a gunshot wound. [187]

The COURT.—Where the defense is suicide or self-destruction, and it is admitted that the immediate cause of death was a wound in the throat, it would be for the jury to determine whether it was a gunshot or something else; the Court would not be permitted to tell them it was a gunshot wound, that is for them to find; but it not being disclosed by any positive evidence of any one present at the time the death took place what caused it, they are permitted to show all the surrounding circumstances as bearing upon the question whether this wound that produced death was self-inflicted, or whether it was received in some encounter with a third party. You may answer the question.

(By direction the reporter reads the question.)

A. Considerable force was exerted.

The COURT.—Describe it more particularly, Doctor, this indent, as they call it, or wound, or whatever you may designate it, describe its appearance, and state then what sort of an instrument might have produced it.

A. At that particular time—if you will allow me to explain a little without answering yes or no, and so forth—at that particular time I did not presume that I would ever be called as a witness; in my capacity as a physician I see, of course, a number of injuries, and I didn't take any particular note of it; I noticed that it was an indentation, or a wound that when it was produced had required considerable force to produce it.

(Testimony of Dr. J. A. Ascher.)

Q. You didn't notice about its recent character?

A. It was impossible for me to say at that time whether it was of recent origin or not. A wound that is produced, and death follows shortly after, or immediately, will not take on the same characteristics as another wound.

Q. That is what I wanted to get at.

A. But as my attention was called to it, and I was asked if I had ever noticed it before, as a family physician of the family, coming in close contact with Mr. Neasham over a period of eleven years, I will say that I never noticed such a scar or a wound before.

Q. It was of an appearance which would have required something of a [188] blow, you say, to produce it?

A. It appeared that way to me, of probably more or less of a blunt instrument.

Mr. KEPNER.—(Q.) Would the blow which caused the mark have been sufficient in your judgment, to have rendered a man unconscious; in other words, would it have been sufficient to have knocked him out, or knocked him down?

A. Yes, I think so.

Mr. KEPNER.—You may cross-examine.

Cross-examination.

Mr. HAWKINS.—(Q.) Doctor, you refer to this place over the eye as a scar or wound of some kind, just tell us what appeared there?

A. Because of the reasons that I have just given, I not expecting to be called as a witness, and other reasons, I stated I did not take any particular note of



(Testimony of Dr. J. A. Ascher.)

it, except to look at it, and probably felt of it, but I didn't examine it carefully, nor thought of ever having to describe that wound at some time in the future, consequently I cannot.

Q. The body had been embalmed when you saw it?

A. I presume it had.

Q. You didn't notice this, as I understand you, until some one called your attention to it there at the house?      A. I did not.

Q. And after that you didn't pay sufficient attention to it to be able to describe it at this time?

A. I simply looked at it, and possible felt of it, but paid no particular attention to it.

The COURT.—(Q.) Was the body in the casket at that time?      A. Yes, it was.

Mr. HAWKINS.—(Q.) Was there any discoloration there, black and blue at that time?

A. I do not remember.

Q. The scar at the place you have referred to could have been received in many different ways, could it not?      A. I presume so.

Q. In a struggle with a horse, or in a runaway with a wagon, or a fall, or in innumerable ways?

Mr. KEPNER.—That is objected to, if the Court please.

The COURT.—I think it is entirely proper for them to show how it might have been received. While the evidence introduced by you, Mr. Kepner, tends to show that this wound, or whatever it was,—abrasion or indent on the skull of the deceased, had never been noticed there before, [189] the jury are entitled to



(Testimony of Dr. J. A. Ascher.)

have all the circumstances, including its appearance, and everything else, and the judgment of an expert like the doctor, as to its appearance, and as to the manner in which it might have been made, to enable them to say whether or no it might have been produced on another occasion, because its only materiality is tending to throw light on the question as to how the deceased came to his death.

WITNESS.—It might have been produced in innumerable ways—it might have been.

Mr. HAWKINS.—(Q.) In your acquaintance with Mr. Neasham, do you remember about his being injured a number of years ago in a runaway by a horse?

The COURT.—You mean Mr. Neasham, the deceased?

Mr. HAWKINS.—Yes.

A. I have some recollection of such an occurrence.

Q. Do you remember whether or not at that time he received a scalp wound?

A. I am rather sure he did not; he sustained simply some minor injury that did not leave much impression upon my mind.

Q. Doctor, is it common or possible for a party to receive a wound which makes a scar, which practically becomes invisible during lifetime?

Q. Why, all scars necessarily, to a large extent, have a tendency to become invisible in course of time, yes.

Q. What is the general character in color of the skin over, across and immediately next to a scar, what tendency has the color to be?

(Testimony of Dr. J. A. Ascher.)

A. It depends upon the nature and the extent of your scar; a small scar, that would become wholly invisible—it depends upon the nature and the extent of the scar.

The COURT.—(Q.) I suppose, Doctor, it is a matter of common knowledge, and is especially known to your profession, that some scars will, depending upon the manner in which they have been made, form a more or less prominent cicatrix upon the surface, and others will leave a furrow?

A. Yes; it depends upon the nature and extent, upon the treatment, the various ways of healing, and numerous things of that kind, that have got to be taken into consideration.

Mr. HAWKINS.—(Q.) Is it a fact that they sometimes become a white '[190] line—the skin there is lighter in color than that adjacent to it?

A. Some scars.

Q. Doctor, if Mr. Neasham had received a blow on the forehead, on the 27th of February, which would cause a depression, or this mark that you say you saw, would it or not have caused a discoloration there?

A. If death had followed immediately afterward, it would be less apt to; the circulation of the blood stopping, there would be less tendency to have any discoloration, or possibly any at all, as the circulation of the blood is stopped, and the extravasation through the tissues, if death had taken place immediately, or a short time afterward, why, possibly not.

The COURT.—(Q.) The blood is withdrawn from the more or less remote parts or members of the body

(Testimony of Dr. J. A. Ascher.)

almost immediately on death, is it not?

A. Well, the blood ceases to circulate, of course, and there is not the extravasation in the tissues.

Mr. HAWKINS.—(Q.) What causes the discoloration when the body receives a blow, Doctor?

A. Usually a rupture of the capillaries, and the blood extravasating through the tissues.

Q. If this mark was caused by a blow, was it of sufficient force to destroy or break those capillaries, and cause the blood to come out? A. Possibly.

Q. You say possibly?

A. Yes; I don't know the exact amount of force which it would require.

Q. How much force would it take to hit a man on the forehead and break the capillaries, so as to make a black and blue place?

A. It depends somewhat upon the place a man is hit; for instance, we know discoloration of the—

Q. (Intg.) I mean this particular place you have described.

A. There would not be nearly so much tendency there as in other parts of the body.

Mr. HAWKINS.—I move the answer be stricken as not responsive.

The COURT.—I think the answer is quite responsive.

(By direction the reporter reads the question and answer.)

Mr. HAWKINS.—I submit it is not an answer to the force at all. [191]

The COURT.—It can only be answered in the com-

(Testimony of Dr. J. A. Ascher.)

parative manner in which the witness has answered it. The exact amount of force, of course common reason teaches, cannot be known in the abstract that would be necessary to produce a given condition under all circumstances.

Mr. HAWKINS.—(Q.) Doctor, I will ask you this: If a blow administered on the forehead, where you have referred to this scar, or mark, was sufficient to knock Mr. Neasham down, would that blow have been sufficient to break the capillaries, and cause a discoloration at that place?

A. Not necessarily; if you will permit me, I will tell you why; simply because there is very little tendency to discoloration by any kind of a blow on the scalp.

Q. Are not there capillaries in the scalp at this particular place where you located this scar and injury? A. Not as many as in other parts.

Mr. HAWKINS.—Will you answer the question? I move the answer be stricken as not responsive to the question.

WITNESS.—There are capillaries, certainly, in all parts of the body.

Q. Are the capillaries in the scalp, and at the place where you have located this scar, or wound, any more difficult to break than they are in other parts of the body—to break by a blow? A. Yes.

Q. They are more difficult to break? A. Yes.

Q. Why?

A. Because of the nature of the tissue, and because of the hair protecting the scalp, you might say—and

(Testimony of Dr. J. A. Ascher.)

because of the nature of the tissue.

Q. Was this mark up in the hair?

A. It was right at the hair line, as I remember it; the hair could have been very easily down.

Q. So that the hair protected?

A. I say it could have been, I don't know whether it did or not.

Q. How long does it take a scar to form, Doctor?

Mr. KEPNER.—Well, in what kind of a wound?

Mr. HAWKINS.—I am talking about a scar.

WITNESS.—That all depends, Mr. Hawkins.

Q. Well, what is the shortest time within which a scar may be formed? [192]

A. I cannot answer that definitely, I don't know. What kind of a scar?

Q. Any wound that leaves a scar, a permanent scar?

A. It is a matter, I should say of several weeks, probably, for what we call an ordinary scar; it depends upon the way it has healed, and the time in which it has healed, and numerous other things; a scar may form in probably a week; it is not a firm, cicatricial tissue, because it constitutes—

The COURT.—(Intg.) (Q.) Well, a scar as we commonly know it, is simply the result and effect and remains of some injury or sore after it has healed, isn't it? A. Yes.

Mr. HAWKINS.—(Q.) I was just going to ask you what constitutes a scar. What makes a scar, Doctor?



(Testimony of Dr. J. A. Ascher.)

A. Well, it is the so-called cicatricial tissue that makes a scar.

Q. A fibrous tissue working in to build up and heal the broken or wounded place? A. Yes.

Q. Now, what is the color of a scar as it progresses in its formation and complete healing?

A. An ordinary scar at first is red in color, and gradually fades out, takes on more or less of the appearance of the surrounding skin, unless it is an extensive scar, and then some of them remain red—if it is extensive.

Q. And when in its period or history of a scar does it become and have the whitish color?

A. It varies upon the size of it.

Q. Now, relatively with the redness which you have mentioned as coming first, about when would the whiteness appear, and about how long?

A. Gradually; it may cover a period of several years, and gradually it may fade out.

Q. Then a scar would be evidence of an old injury, or an injury of some time standing, is that true?

A. A scar would be evidence of an injury, yes.

Q. And it would of necessity be of some, say two weeks' standing at least, before it would be a scar?

The COURT.—I think this has gone far enough.

Mr. HAWKINS.—Very well, your Honor, that is all. [193]

#### Redirect Examination.

Mr. KEPNER.—(Q.) Doctor, assuming that Mr. Neasham was struck over the head with some blunt instrument, a blow of sufficient force to cause the dent



(Testimony of Dr. J. A. Ascher.)

or depression in his forehead which you have referred to; that he was knocked down, and that immediately by some injury in his throat the blood vessels in the interior and back part of his throat were severed so that he bled profusely from the nose and mouth, could you state whether or not the dent or depression in his forehead would be discolored?

Mr. HAWKINS.—I object to the question.

The COURT.—Oh, I think that has been covered by the evidence of the witnesses.

Mr. KEPNER.—It has partially been covered, your Honor, but not in full.

The COURT.—Well, he has testified, and it is something that all have more or less knowledge of, that immediately upon death circulation is arrested, and the active tendency of the blood therefore to gather, or extravasate, as the Doctor has expressed it, is withdrawn. Now that condition must of necessity be exaggerated where there is profuse bleeding,—loss of blood; would not that be true, Doctor?

WITNESS.—Yes, Judge, it would.

The COURT.—I would not spend any more time on that; it is in large part speculation.

Mr. KEPNER.—That is all.

Mr. HAWKINS.—(Q.) Where is the blood, in the vessels or the tissues?

The COURT.—I don't care to go into matters of that kind. You may put your own doctor on, if you want to, that is, if it is proper surrebuttal, but I don't want to have this witness go into that. [194]

**Testimony of Verdi Peterson, for Plaintiff  
(In Rebuttal).**

Mr. VERDI PETERSON, called as a witness by plaintiff, in rebuttal, after being sworn, testified as follows:

Direct Examination.

(By Mr. KEPNER.)

Q. Where do you reside, Mr. Peterson?

A. Reno, Nevada.

Q. What is your occupation?      A. Laborer.

Q. Where were you on the 27th day of February, 1915?      A. In Reno.

Q. Did you know William C. Neasham in his lifetime?      A. Yes, sir.

Q. How long had you known him?

A. Well, more than twenty years.

Q. More than twenty years?      A. Yes, sir.

Q. Did you meet him on the morning of the 27th of February?

A. I met him in the latter part of the month, I would not swear that it was the 27th or the 28th.

The COURT.—(Q.) Well, can you fix it with reference to his death; was it the same day that he died?

A. Yes, sir.

Q. Well, that is what he is asking.      A. Yes, sir.

Mr. KEPNER.—(Q.) You met him on the morning he died?      A. Yes.

Q. What time in the morning?

A. Well, somewhere between eight and nine o'clock.

Q. Nine o'clock?

(Testimony of Verdi Peterson.)

A. As near as I can remember.

Q. In the morning?      A. In the morning.

Q. Whereabouts?

A. On the corner of Virginia Street and Commercial Row.

Q. What was his manner and appearance?

A. Happy; contented; never saw him happier in my life than he was that morning.

Q. Did you have any conversation with him?

A. Yes, sir.

Q. How long were you there together?

A. We were there probably four or five minutes.

Q. Where was this point that you met him—where did you meet?

A. Where we met—on the corner of Virginia Street and Commercial Row.

Q. When you separated which direction did he go?

A. He went to the Overland Hotel, as he told me he was going.

Mr. HAWKINS.—I didn't catch that.

WITNESS.—To the Overland Hotel, and I went to the postoffice—separated on the corner. [195]

Mr. KEPNER.—(Q.) He told you he was going to the Overland, and he went in that direction?

A. Yes, sir.

Q. Did he say anything else to you before you separated?      A. Yes, sir.

Q. What was it?

Mr. HAWKINS.—Object to that as incompetent, irrelevant and immaterial.

The COURT.—What is the purpose?

(Testimony of Verdi Peterson.)

MR. KEPNER.—Simply to show the frame of mind the man was in when he was last seen alive at nine o'clock in the morning, an hour before he died.

THE COURT.—I don't think that would be admissible. You may show by acquaintances under such circumstances that a party involved was seen very recently, and that he appeared to be in his usual frame of mind and carried his usual manner, did not look distraught, or anything of that kind, but what he says has nothing to do with it, unless it is a declaration tending to show some disposition on his part to commit the act which it is sought to prove he did, then the other side might prove that; but statements that he made that had nothing to do with the purpose are not admissible.

MR. KEPNER.—(Q.) You later heard of the death of William Neasham, did you? A. Yes, sir.

Q. How long after your meeting on the corner?

A. I should judge probably from one hour to one hour and a half, or thereabouts; something before ten o'clock, as near as I remember.

Q. You think you heard it about ten o'clock?

A. Somewheres about there.

Q. Did you go to the undertaking parlors?

A. Yes, sir.

Q. See the body?

A. Yes, sir; I did; of course, I didn't believe the report, when I heard it on the street.

MR. HAWKINS.—I move that answer be stricken.

MR. KEPNER.—I have no objection. You may cross-examine.

MR. HAWKINS.—No cross-examination. [196]

**Testimony of Mrs. May Kepner, for Plaintiff  
(In Rebuttal).**

Mrs. MAY KEPNER, called as a witness by plaintiff, in rebuttal, after being sworn, testified as follows:

Direct Examination.

(By Mr. KEPNER.)

Q. What is your name?      A. May Kepner.

Q. What is your husband's name?

A. Thomas E. Kepner.

Q. What is your relation to Mrs. Neasham?

A. I am her sister.

Q. Did you know Mr. Neasham, the husband of the plaintiff?      A. I did.

Q. How long had you known Mr. Neasham?

A. I knew Mr. Neasham about twenty-six years—I think about twenty-six years ago since I met him.

Q. Would you frequently visit your sister's home?

A. I did.

Q. How frequently?

A. Oh, sometimes every day every week; the last two or three years since she has been living in town, I was with her a great deal.

Q. State what Mr. Neasham's treatment of and regard for his wife and children was, as you observed it; and what their treatment of and regard for him was, as you observed it?

Mr. HAWKINS.—If the Court please, I object; I don't see how that is material, competent or relevant; it does not tend to prove or disprove any issue.

The COURT.—Well, that same idea occurred to me yesterday, but you permitted evidence to go in in

answer to precisely the same question. I thought probably you regarded it as bearing upon the question as to whether there existed any inducing cause for suicide, growing out of unpleasant domestic relations, or something of that kind. You don't claim that at all?

Mr. HAWKINS.—No, sir; we haven't suggested it at all; I didn't object, because I didn't care at that time, but I don't see why it should be continued.

Mr. KEPNER.—As I understand the situation, it is this, your Honor: Where the defense in an action of this kind is suicide, even though the domestic relations of the parties have not been attacked or assailed, nevertheless it is competent in rebuttal to show circumstances from which the jury might draw an inference against suicide—to show that he had a good home, that he had a wife and children, and that he lived happily [197] with them.

The COURT.—I think you are correct about that. I think in rebutting the assertion of suicide, you may show all the surrounding circumstances, and the absence of those things which would tend to give cause or motive for taking one's life; but it seems to me you have all you want in the concession of the other side, that they don't claim there was any such condition.

Mr. KEPNER.—That may be true at this point, but it was not true at the time I called the witness and asked the question. That is all, Mrs. Kepner.



**Testimony of Mrs. Matilda C. Neasham, in Her Own  
Behalf (In Rebuttal).**

Mrs. MATILDA C. NEASHAM, the plaintiff, called as a witness in rebuttal, testified as follows:

**Direct Examination.**

(By Mr. KEPNER.)

Q. Calling your attention to the day before your husband died, I will ask you whether or not Mr. Neasham was interested in the National Mine in Humboldt County?

Mr. HAWKINS.—Objected to as incompetent, irrelevant and immaterial, and not rebuttal evidence.

The COURT.—What is the purpose of this?

Mr. KEPNER.—The purpose is to show that a message was received that evening which was very cheerful, and which had a—

Mr. HAWKINS.—I would rather not—

The COURT.—I am asking counsel to tell me the materiality of this, and he is answering it.

Mr. HAWKINS.—May I suggest that he may tell just what this witness is going to tell, in the presence of the jury.

The COURT.—Certainly he may; but it is not evidence unless it is permitted to go in.

Mr. HAWKINS.—It will go to the jury just the same.

The COURT.—I assume, and I think you will find the jury is of enough intelligence to distinguish between a mere statement of counsel, and the evidence in the case. State what it is so I may rule on it.

Mr. KEPNER.—That he was interested in the

(Testimony of Mrs. Matilda C. Neasham.)

National Mines, and that [198] evening, Friday evening before his death, a message was received which tended to, and did give, both Mr. Neasham and his wife a great deal of pleasure.

The COURT.—I think I will exclude that. Gentlemen of the jury, I hardly think, looking at you as a lot of intelligent men, that it is necessary for me to suggest that nothing is evidence that is not admitted by the Court from the witness-stand; the mere statements of counsel, of course, are not evidence, they are not evidence at all, and they are not to be regarded by you, excepting in so far as they are based upon the evidence. I never have any fear of permitting matters to be stated before an intelligent jury, because they are able to discriminate between the evidence in the case and what is stated as mere matters of procedure in the trial.

Mr. KEPNER.—(Q.) After your husband died, I will ask you whether anything, any article which he usually carried on his person, was missing, if so what was it?

Mr. HAWKINS.—I object to the question.

The COURT.—You may answer.

Mr. HAWKINS.—May I state an objection to that, if the Court please? There is nothing here to show that he had this article on him at any particular time.

The COURT.—The question is, that he usually carried; that is all.

Mr. HAWKINS.—I would like an exception to the ruling, if the Court please.

(By direction the reporter reads the question.)

(Testimony of Mrs. Matilda C. Neasham.)

WITNESS.—Am I to answer?

Mr. KEPNER.—Yes.

A. The check-book that he used for his ward, Ray J. Cool, was missing, and he always carried it with his own book in the same pocket.

Mr. HAWKINS.—I move the answer be stricken as incompetent, irrelevant and immaterial; and does not tend to prove or disprove any of the issues.

The COURT.—Let it go out; it hasn't any materiality.

Mr. KEPNER.—I will state to the Court that is simply a preliminary [199] question.

The COURT.—What is the purpose?

Mr. KEPNER.—The purpose is to show that this check-book which Mr. Neasham usually carried in his pocket, a subsequent question will disclose the fact that he usually signed a number of checks in blank, and that the last time the witness saw the check-book, which was the day before he died, there were several blank checks signed in the book.

The COURT.—Well, what of it?

Mr. KEPNER.—Now, that book having disappeared at the time of his death might be a circumstance from which the jury could draw an inference as to whether he died by his own act, or by the hand of another.

The COURT.—Do you propose to follow it up by showing any checks were subsequently presented?

Mr. KEPNER.—No, I do not.

The COURT.—Objection sustained.

Mr. HAWKINS.—No cross-examination.

(Testimony of Mrs. Matilda C. Neasham.)

Mr. KEPNER.—If your Honor please, at this time, and in connection with the testimony of the witness Frank Collins, your Honor will remember that you asked the witness a number of questions as to the statute, and the requirements of the statute; I would like to ask your Honor to read sections 6465 and 6467 of the Revised Laws, and if your Honor deems it necessary I will read it to the jury. The purpose is to contradict the statement of Mr. Collins, and to discredit the witness.

The COURT.—This is a regulation such as I asked the witness if it did not exist in this State?

Mr. KEPNER.—And he denied that it did exist—denied that it required him to make any report.

(The Court reads the statute referred to by counsel.)

The COURT.—This is the usual police regulation provided by the statute, which I imagined did exist; the witness evidently did not seem to know it.

Mr. KEPNER.—Your Honor has read it, so it will not be necessary for me to read it again.

The COURT.—Oh, it is a matter of law. [200]

Mr. KEPNER.—Plaintiff rests.

Mr. HAWKINS.—Defendant has no further evidence. If the Court please, at this time on behalf of the defendant, I desire to interpose two motions:

Comes now the defendant, New York Life Insurance Company, by its attorneys, at the conclusion of all the evidence offered by both parties in the case, and moves the Court to direct a verdict, and to instruct the jury to return a verdict, for the defendant

upon the cause of action asserted in plaintiff's complaint, in so far as plaintiff seeks to recover the sum of Ten Thousand Dollars as the amount of the insurance under said contract, Exhibit "A" to the complaint filed here. Said motion is made upon the grounds and for the reasons as follows, to wit:

1st. That under the pleadings and evidence in this case, and the law applicable thereto, there is no liability against the defendant company, and the defendant is not indebted to the plaintiff in the said sum of Ten Thousand Dollars.

2d. That the cause of action asserted in plaintiff's complaint is founded and based upon a written contract, Exhibit "A" attached to and made a part of the complaint.

3d. That it appears from the record in this cause:

(a) That "in the event of self-destruction during the first insurance year, whether the insured be sane or insane, the insurance under this policy shall be a sum equal to the premiums thereon which have been paid to and received by the company, and no more."

(b) That the first insurance year under said contract Exhibit "A" to the complaint, was between the 10th day of July, 1914, and the 10th day of July, 1915.

(c) That said insured, William C. Neasham, during said first insurance year, and on to wit, February 27th, 1915, committed self-destruction by a gunshot wound self-inflicted.

4th. That by reason of the fact that said insured, William C. Neasham, did destroy or kill himself during the first insurance year, the amount of the insur-



ance was not Ten Thousand Dollars, and under the [201] terms of said contract, Exhibit "A" to the complaint, the plaintiff is not entitled to recover said sum of Ten Thousand Dollars, or any other sum or amount greater than a sum equal to the premium on said contract or policy, Exhibit "A" to the complaint, which has been paid to and received by the company. And it appears from the record herein, and is admitted, that the premium on said contract or policy, Exhibit "A" to the complaint, was the sum of \$456.00, and no more.

The COURT.—It was distinctly stated yesterday that unless the jury found plaintiff to be entitled to recover the whole amount of the policy, plaintiff disclaims and waives any right to recover any premium that may have been paid, so it lays that out of consideration.

(Discussion.)

The COURT.—It is sufficient for me to say now that the evidence in the case is such as to preclude me from taking the case from the jury. The rule, in this circuit particularly, is very stringent that no case must be withdrawn from the consideration of the jury, which has the right under the law, to find the facts, if in the judgment of the Court, a deduction may be drawn from the evidence by a reasonable mind, at variance with the theory upon which the motion was based. So I will deny your motion, and let the cause proceed to the jury.

Mr. HAWKINS.—Your Honor will give us an exception?

The COURT.—Oh, yes.



Mr. HAWKINS.—For the reasons stated in the motion :

1st. That under the pleadings and evidence in this case, and the law applicable thereto, there is no liability, against the defendant company, and the defendant is not indebted to the plaintiff in the sum of Ten Thousand Dollars.

2d. That the cause of action asserted in plaintiff's complaint is founded and based upon a written contract, Exhibit "A" attached to and made a part of the complaint.

3d. That it appears from the record in this cause :

(a) That "in the event of self-destruction during the first insurance year, whether the insured be sane or insane, the insurance under this policy shall be a sum equal to the premiums thereon which have been paid to and received by the company, and no more."  
[202]

(b) That the first insurance year under said contract Exhibit "A" to the complaint, was between the 10th day of July, 1914, and the 10th day of July, 1915.

(c) That said insured, William C. Neasham, during said first insurance year, and on to wit, February 27th, 1915, committed self-destruction by a gunshot wound self-inflicted.

4th. That by reason of the fact that said insured, William C. Neasham, did destroy or kill himself during the first insurance year, the amount of the insurance was not Ten Thousand Dollars, and under the terms of said contract, Exhibit "A" to the complaint, the plaintiff is not entitled to recover said sum of Ten Thousand Dollars, or any other sum or amount

greater than a sum equal to the premium on said contract or policy, Exhibit "A" to the complaint, which has been paid to and received by the company. And it appears from the record herein, and is admitted, that the premium on said contract or policy, Exhibit "A" to the complaint, was the sum of \$456.00, and no more.

Thereupon, the defendant requested the Court to give to the jury the following instructions:

1.

The jury are instructed that under the evidence in this case and the law applicable thereto, there is no liability against the defendant, New York Life Insurance Company, upon the cause of action asserted in plaintiff's complaint, in so far as plaintiff seeks to recover the sum of Ten Thousand Dollars as the amount of the insurance under said contract, Exhibit "A" to the complaint herein. You are therefore instructed to return a verdict for the defendant upon the cause of action asserted in plaintiff's complaint, in so far as plaintiff seeks to recover a judgment of Ten Thousand Dollars as to the amount of the insurance under said contract, Exhibit "A" to the complaint herein.

2.

The jury are instructed that under the facts in this case and the law applicable thereto, there is no liability against the defendant, New York Life Insurance Company, and you are instructed to return a verdict for the defendant. [203]

At the conclusion of the argument, the Court instructed the jury as follows:

The COURT.—Gentlemen of the jury, I will ask your attention for a few moments while I proceed to submit to you the principles of law in this case, which must govern you in your deliberations in arriving at a verdict; the evidence and argument having been submitted, this alone is necessary for your guidance in your deliberations when you retire to your jury-room.

You have all understood long since that this is an action brought to recover upon a policy of life insurance issued to the deceased, William C. Neasham, in an amount for the sum of Ten Thousand Dollars. In the course the cause has taken, there is left but one main issue for your determination in order to reach a verdict.

The policy which has been read to you contains a provision in these words: "In the event of self-destruction during the first insurance year"—that means the first insurance year on the policy—"whether the insured be sane or insane, the insurance under this policy shall be a sum equal to the premiums thereon which have been paid to and received by the company, and no more."

This provision means that in the event stated, the company shall be relieved of all liability to pay the amount of the insurance on the life, in this instance Ten Thousand Dollars, but shall only be required to repay to the beneficiary under the policy any moneys which may have been paid it in the way of premiums thereon. This is a perfectly valid provision of the policy, and being a part of the contract made by the deceased, is binding upon the benefi-

ciary under the policy. The beneficiary under the policy is the party to whom it is provided the insurance is to be paid in the event of death—in this instance the plaintiff here.

The defense interposed by the defendant is that the deceased, William C. Neasham, the party insured under the policy, violated this provision of the policy by voluntarily and intentionally taking his own life during the first insurance year under the policy, and that by reason of that fact the defendant is wholly exempted and relieved from any liability to pay the amount for which his life was insured. [204]

It is also denied that any premium has ever been paid to the defendant, and therefore it is under no liability to pay anything under the policy in any amount.

As to this second feature of the defense, it is removed from your consideration—as I have suggested to you once before to-day—and rendered immaterial by reason of the fact that plaintiff has disclaimed and waived any right to recover whatsoever, unless found by the jury to be entitled to recover the whole amount covered by the policy; and the defendant concedes that notwithstanding the alleged nonpayment of premium, the policy was in force at the death of the insured, unless found by you to be avoided by the manner of his death.

The evidence shows without conflict, and in fact it is admitted, that the death of the insured occurred during the first year of the existence of the policy; and the main issue, therefore, which I have referred

to is as to the manner of that death, since, under the evidence in the case, the plaintiff has made out her cause of action entitling her to recover the stipulated amount of insurance, unless that right is found by you to have been defeated by the act of the deceased in taking his own life.

If the insured died from any other cause than self-destruction, plaintiff must recover. If he took his own life, whether sane or insane, the verdict must be for the defendant.

The defense of self-destruction or suicide, which for present purposes means the same thing, is an affirmative defense, and the burden of proving it rests upon the defendant who asserts it. Suicide or self-destruction, being at variance with the ordinary human instincts, and involving a wrongful act, is never to be presumed, but must be proved or established by evidence sufficiently satisfactory to overcome the presumption against it, and to exclude from the minds of the jury every reasonable theory or hypothesis as to the cause of the death of the person involved other than that of self-destruction. The proof is not required to be beyond a reasonable doubt, as in a criminal case, but it must preponderate sufficiently in support of the defense of suicide to overcome the presumption of the innocence of the deceased of the wrong [205] involved in taking his own life, and establish with reasonable certainty that the death was the result of self-destruction, rather than accident, mischance, or violent injury inflicted at the hands of another.

The term "self-destruction" used in this policy



and understood in the law, does not necessarily cover and include every instance in which a man dies as a result of his own act. The term means, and is intended to mean, and is meant to express the instance where the act which produces death is done intentionally, and with the deliberate purpose of producing death. In other words, self-destruction contemplates a union or joint operation of act and intent. It is the intent with which the act is done which distinguishes it from death resulting from accident or negligence. If one is handling a deadly weapon or other instrumentality, in a negligent and careless manner, and as a result is accidentally killed, in such an instance, although death results from his own act, it is not self-destruction or suicide such as to excuse a defendant's liability, for the intent is absent. In such case it is what is denominated an accidental death. Whereas, if the same act be done intentionally, with the purpose of taking his life, it is self-destruction in the sense in which that term is used in the policy. While the person whose act is concerned must be conscious of the fact that the act he does is dangerous and may produce death, it is not necessary under such a provision as that involved here, in order to relieve the insurer, that the person taking his life be conscious of the moral quality or consequence of his act, but only that he know that the means he employs will cause, or is calculated to cause, death or danger to his life.

The fact of self-destruction, like any other fact in a civil case not requiring some specific mode of



proof, may be shown by circumstantial evidence, but the circumstances as the basis of such fact should, like any other character of evidence, be such as to exclude with reasonable certainty, as I have indicated, any other theory or cause to account for the death of the person involved.

Applying these principles to the evidence in this case, if the jury find that the act of shooting was done by the deceased, that it was done intentionally, and with the purpose of taking his own life, [206] then, as I have said, whether he was at the time sane or insane, the plaintiff cannot recover. If, on the other hand, the jury find that the shooting was done by the deceased, but that it was done accidentally, or was the result of carelessness, and without the intent or purpose of taking his life, then under the evidence, the plaintiff will be entitled to a verdict. And, of course, should you find that the shot which killed the deceased was fired by some third person, then and in that event the plaintiff will be entitled to your verdict.

If you find for the plaintiff, she will be entitled to a verdict at your hands for the amount stipulated in the policy, Ten Thousand Dollars, together with interest thereon at the legal rate of seven per cent per annum from the date she furnished defendant the proofs of death, which was March 15th, 1915, down to the date of your verdict. This interest should be computed by you, and added to the principal of Ten Thousand Dollars, and inserted in your verdict as a total or lump sum; you do not express the two items separately.

Should you find for the defendant, then your verdict must simply be a declaration to that effect.

Now, gentlemen of the jury, these are what may be termed the more specific principles applicable to this case, because they cover the particular nature of the cause of action asserted. There are certain general principles, however, which should be stated to you.

While it is the duty of the Court to state the law to the jury and equally their duty to observe it in their deliberations upon the evidence, it is solely the function and right of the jury to pass upon the evidence, to say what it shows. You find the facts, with that the Court has nothing whatsoever to do; and it is neither its privilege nor its purpose to have the jury influenced in any wise by ideas they may gather from its expressions made during the trial in ruling upon evidence, or in any other way, that would be calculated to influence the minds of the jury.

The burden of finding the facts and reaching a verdict in a case of this kind, rests on you, and you cannot shift it to the Court; and if you have gathered from anything uttered by the Court throughout this [207] trial any idea as to its views as to the facts in this case, you must discard them from your minds, and rest your verdict solely and alone upon the result of your own deliberations, wholly unbiased by anything that you may have heard from the bench.

There have been one or two motions made during the trial which called for suggestions at the hands of the Court as to various contentions of counsel as to what was shown in this case. Whatever was said by

the Court in those instances was said solely with reference to the particular question of law involved at the time, and was intended in no respect to indicate to this jury what the idea of the Court was as to what the verdict should be.

Now, you are necessarily the judges of the credibility of the witnesses in this case, because that is involved inseparably with the determination of the facts. You must say how far you will believe any witness that has appeared upon the stand, that means according to him the credibility to which he is entitled. A witness goes upon the witness-stand, and you observe his manner of testifying just exactly as you would observe the manner of a man that met you upon the street, who entered in conversation with you, and was proceeding to relate to you something of a nature which he was desirous of having you believe. You note his manner, you note the nature of what he says, how far it appears to be intrinsically true, or how far it seems to be at variance with other facts disclosed to you by the evidence; whether he appears to make his statements from the stand in a frank, candid and open manner; or, on the other hand, apparently equivocates—forgets, that very ready suggestion of one who is not always ready to be frank and open; and you make up your minds from those things; and from any apparent interest he may manifest in the case, either bias in favor of one side, or prejudice against the other; and determine what degree of credibility you will accord to him.

Now, under the law, every witness that goes upon

the stand is accorded the presumption that he will tell the truth; but this does not mean, of course, that a witness will always tell the truth; and it does not mean that the jury is always bound to believe that he is telling [208] the truth. You apply the tests that I have indicated, and such others as appeal to your judgment, and you say whether he is telling the truth; and you are not required to enforce this presumption unless the evidence of the witness accords with your judgment as to the truth. All this presumption means is, that a witness going upon the stand and telling a story probable in itself, and as to which there appears nothing to call it into question, and nothing to impeach his credibility in any way, you are not permitted arbitrarily to say you will not believe that witness; you are to presume that he is telling the truth. But you are not bound to believe every witness who appears upon the stand, no matter how positively and strongly he may testify, if you are satisfied from his manner, or the matter to which he testifies, that it is not in all respects the truth.

Now, because a witness says that he has forgotten, or because a witness may make statements which you are satisfied are at variance with the truth, if, in your judgment, those statements are made simply as the result of mistake, while they may make you more careful in examining his evidence to see how far you will believe it, it does not require you necessarily to discard his evidence entirely. But if a witness has testified to a fact upon the stand, which you believe to have been stated deliberately and for the purpose of deceiving you, and you believe it to be false, then

you have a right to discard all of the evidence of that witness. You are not called upon to believe it to any extent, excepting just so far as it is supported in your judgment by other evidence in the case, which you do believe.

Now, that is passing upon the credibility of the witnesses; and from the sum and substance of the evidence of these various witnesses, you make up your mind as to what the facts are involved in the issues as to which those witnesses have testified.

I think it is hardly necessary for me to suggest to a body of men as intelligent as you appear, that what has been suggested to you in argument is perfectly correct; that is, that your verdict in a case of this kind must be based upon the evidence in the case, and upon nothing else. No considerations of mere sympathy on the one hand or prejudice [209] upon the other, must find a reflection in the verdict of an honest jury. You are to take the evidence and pass upon it, and reach your verdict unbiased to any such considerations. You have a right in examining the evidence to any enlightenment which you may receive at the hands of counsel through their arguments. That is one of the methods of laying before the minds of the jury the views of those who are employed to represent the respective parties as to their theories of what the evidence shows. You are entitled to receive those views, and to apply them in your consideration of the evidence, but only to the extent that you find that they tend to enlighten you; you are not bound at all by the suggestions of counsel, if you find in any respect they transgress the



strict lines of the evidence; nor are you bound to act upon a theory advanced by either counsel. You are permitted, if you see fit, to base your verdict upon a theory wholly separate and apart from that advanced by either counsel, under any circumstances appearing in the evidence which will warrant such a theory. Any theory which underlies the verdict of a jury must be supported by evidence in the case. All I intend by this suggestion to you is, that if in your examination of this evidence you conclude you cannot account for the death of this deceased in accordance with the theory advanced by either counsel, but you can account for it in accordance with some other theory which you believe the evidence warrants, you are at perfect liberty to find your verdict according to such theory as suggests itself to your judgment.

Under the Federal system your verdict must be unanimous; you are not permitted to find a verdict by a less number, as you are under the State system. Under the State system, you may find a verdict by less than the entire twelve, but you cannot do so under the Federal statute.

I think that comprises all I deem it necessary to say to you gentlemen. The clerk, I presume, has prepared the forms of verdict, and you will find them to meet the necessities I have suggested in the form of your verdict.

Mr. HAWKINS.—May I make a suggestion as to the charge—as to the interest of the witnesses in the result of the suit, who have testified. [210]

The COURT.—Yes, that is a proper suggestion.



You have a right to take into consideration in passing upon the credibility of a witness, the fact that it appears the witness has an interest in the case; and you may measure to what extent, in your judgment, under all the circumstances, that fact may tend to color the evidence of a witness, or induce a deviation from the strict truth. That is simply another one of the tests that you apply to the evidence of witnesses in determining their credibility. Do counsel desire to take any exceptions?

Mr. KEPNER.—I would like to make a suggestion to your Honor. Possibly I had better come up to the desk.

The COURT.—No, make any suggestions you see fit.

Mr. KEPNER.—If your Honor please, in outlining the circumstances under which the jury might find a verdict, your Honor proceeded to state if they found it was by the act of the deceased, intentionally; and then what the effect would be if they found it was by the act of the deceased without any intention; and then your Honor stated if it was by the act of a third party, and so on. I suggest to your Honor that if the jury is in doubt, and unable to say by whom the act was committed, then they should find for the plaintiff.

The COURT.—Well, that is covered by the charge of the Court when it instructs the jury that the evidence must enable them to find that the death was the result of self-destruction, or of course the plaintiff would be entitled to recover.

The burden, gentlemen of the jury, being upon the

defendant to establish its affirmative defense that this death was the result of self-destruction, it follows, as I have heretofore suggested to you—perhaps counsel didn't notice it—that that must be sustained, or satisfy you by the greater weight of the evidence that such was the fact; and if it does not, if it leaves you in doubt, then of course the defendant will not have sustained the burden of proof by a preponderance of the evidence, and your verdict will necessarily be for the plaintiff.

Mr. KEPNER.—That is all, your Honor.

Mr. HAWKINS.—If the Court please, in order to continue my theory in this matter, I desire to have the record show certain exceptions to your Honor's charge. [211]

First, we desire an exception to all that part of the charge which says that the plaintiff has made a *prima facie* case, and that the burden is on the defendant to establish by a preponderance of the evidence, self-destruction.

Second, we desire an exception, and do except to the charge in all parts where it incorporated the question of an accident, in that there is no evidence tending to establish accident, or no contention by the plaintiff, in that under the pleadings there is an affirmative statement that the deceased came to his death by a gunshot wound at the hands of some person or persons other than plaintiff.

We desire to except to all that part of the charge which incorporates the question of intention. I believe that is all.

Thereupon the jury at 3:20 o'clock P. M. retired to consider of their verdict, and at 5:10 o'clock P. M. returned into court.

The COURT.—Gentlemen, have you agreed upon a verdict?

JUROR.—Your Honor, we have not.

The COURT.—What is your desire?

JUROR.—We desire to have read the transcript of sheriff Ferrell's evidence before the coroner's jury.

The COURT.—That was read during his examination?

JUROR.—Yes, sir, and taken in evidence. And we want to hear read ex-Sheriff Burke's testimony before this jury.

The COURT.—The entire testimony?

JUROR.—Yes.

The COURT.—You are supposed to pay attention to the evidence. If there is some particular evidence you wish to have read, but to read the transcript of the entire evidence—

JUROR.—There seems to be a question between several jurors' memory in this.

The COURT.—Some particular point?

JUROR.—We would like to have ex-Sheriff Burke's evidence read as to the tracks he testified to having found on the railroad.

Thereupon the reporter reads the following testimony.

C. P. FERRELL.

“Mr. KEPNER.—(Q.) Did you testify at the coroner’s inquest in Reno on [212] the occasion when you say you delivered this gun to Mr. Unsworth?      A. I did.

Q. And you were asked about this gun at that time?      A. I was.

Q. I will get you to state whether you were asked this question by the district attorney: ‘Q. Did you take the gun?’ to which you answered, ‘Yes, I picked the gun up.’      A. I did.

Q. Then you produced the gun; and then you were asked this question, referring to this same pistol: ‘Is this in the same condition as it was?’ to which you answered, ‘No, I removed the shell from the chamber, and there are nine shells in the magazine.’

A. Well, you are getting two questions together.

Q. The question and your answer. The question: ‘Is this in the same condition as it was?’ to which you answered: ‘No, I removed the shell from the chamber, and there are nine shells in the magazine.’ Did you so testify?

A. It is compounded in two questions.

Q. Now the question was repeated: ‘Q. Is it in the same condition?’

A. It is in the same condition with the exception that the safety was on the trigger, I took the shell out of the chamber and there is nine in the magazine.’ Did you so testify?

A. No, sir, I did not. I will explain my testimony.

Q. Now did you testify in substance, Mr. Sheriff, that when you picked this pistol up the safety was on the trigger?     A. I did not."

A. A. BURKE.

"Q. What examination did you make, Mr. Burke, of the so-called gravel pit, shown in Plaintiff's Exhibit 'D'?

A. I examined the ground about the place for tracks, or for any indications I might find of other people having been there, or any indication I might find of a struggle having taken place there.

Q. Did you make any examination of that place on the 28th of February?     A. Yes, sir.

Q. What did you observe?

A. I observed tracks in the ground there; the ground was a soft, sandy ground, and had lately thawed out from being frozen; the ground was soft, and I observed tracks there, and observed a place where some one had been lying down." [213]

The COURT.—Is there anything else, gentlemen?

JUROR.—Acting in a capacity in which I have never been placed before, I would like to know if it is proper to arrive at a verdict entirely through a secret ballot, or by an open ballot?

The COURT.—The jury determines their method of arriving at a verdict. I will say the very purpose of having an aggregate body of men on a jury is that the parties shall have the benefit of the united judgments of those men, and it is proper, and expected, that the jury will discuss the evidence

among themselves, reach their conclusions from the evidence, agree upon such manner as they may see fit to express their votes, and vote accordingly; whether you vote secretly or whether you vote openly rests with you.

JUROR.—If your Honor please, we are satisfied as to what we wanted.

Mr. HAWKINS.—If the Court please, before the jury retires, I want to make a suggestion. This testimony of Mr. Burke's that was read was fixed as on the 28th, the day after whatever occurred there transpired.

The COURT.—The jury are supposed to remember everything excepting what they ask to have their memory refreshed upon.

Thereupon the jury at 5:20 o'clock P. M. again retired to consider of their verdict, and at 6:10 P. M. returned into court with the following verdict:

"We, the jury in the above-entitled case, find for the plaintiff in the sum of \$10,689.30.

Dated, March 10th, 1916.

J. S. MITCHELL,  
Foreman." [214]

I, A. F. Torreyson, Reporter in the United States District Court for the District of Nevada, DO HEREBY CERTIFY:

That as such reporter I took *verbatim* shorthand notes of the testimony and proceedings in said court on the trial of the case of Matilda C. Neasham, Plaintiff, vs. New York Life Insurance Company, a Corporation, Defendant, on March 6th, 8th and 9th,



1916, and that the foregoing transcript, consisting of pages 1 to 206, inclusive, contains a full, true and correct transcription of my shorthand notes of the testimony given and proceedings had on said trial.

Dated Carson City, Nevada, June 14th, 1916.

A. F. TORREYSON.

(Revenue Stamp—Ten Cents.) [215]

**Plaintiff's Exhibit "A"—Policy of Insurance.**

NEW YORK

LIFE

INSURANCE COMPANY

By This Policy of Insurance Agrees to Pay

\*\*\* TEN THOUSAND \*\*\* Dollars

at the Home Office of the Company in the City and State of New York to Matilda C., wife of the insured \*\*\*\*, Beneficiary, (with \*\* the right on the part of the Insured to change the Beneficiary as hereinafter provided) upon receipt at said Home Office of due proof of the death during the continuance of this contract, of \*\*\* WILLIAM C. NEASHAM \*\*\* the Insured.

This insurance is granted in consideration of the payment of the first premium

of \*\* Four hundred fifty-six 90/100 \*\*\* Dollars the receipt of which is hereby acknowledged, constituting payment for the period terminating on the Tenth day of July in the year Nineteen Hundred and fifteen and the payment of a like sum on said date and on the Tenth \*\* day of July \*\* in every year thereafter during the continuance of this Policy until the death of the Insured.

This policy is free of conditions as to residence, travel, occupation, or military or naval service, and shall be incontestable after one year from its date of issue except for nonpayment of premium. After its delivery to and receipt by the Insured this Policy

Date Policy  
Takes Effect

takes effect as of the Tenth day of July Nineteen Hundred and fourteen.

The benefits and provisions printed or written by the Company on the following pages are a part of this contract as fully as if they were recited at length over the signatures hereto affixed.

In Witness Whereof the NEW-YORK LIFE INSURANCE COMPANY has caused this contract to be signed this Twenty-third day of July, Nineteen Hundred and fourteen.

Examined  
W.  
D.  
O. L.  
913-1

DARWIN P. KINGSLEY,  
President.

SEYMOUR M. BALLARD,  
Secretary.

Age 48.

\_\_\_\_\_,  
Registrar.

Insurance Payable at Death: Premiums Payable  
During Life: Annual Dividend.

\* \* \* \* \*

SELF-DESTRUCTION.—In event of self-destruction during the first insurance year, whether the Insured be sane or insane, the insurance under this Policy shall be a sum equal to the premiums thereon which have been paid to and received by the Company, and no more.

**Plaintiff's Exhibit "B"—Statements.**

**Claimant's Statement No. 1—Proof of Death.**

**PROOFS OF DEATH.**

**CLAIMANT'S STATEMENT No. 1.**

(Before making out this Statement, read carefully the Special Instructions on the other side.)

1. No. of policy, 4,707,986.
2. Name of deceased in full.
3. Residence: a. When policy was issued. b. At time of death.
4. When was residence last changed?
5. Occupation: a. When policy was issued. b. At time of death.
6. Date of birth.
7. Place of birth.
8. State the source from which date of birth was obtained.

Note.—The Family Record, Certificate of Birth, or other writings should be referred to.

9. a. Place of death. b. Date of death.
10. Name and residence of every physician who attended deceased during the year prior to death.
11. In what other companies and for what amounts was life of deceased insured?
12. In what capacity, or by what title, do you claim this insurance?
13. What was your age at your last birthday?

Dated at Reno, Nevada, this 15th day of March, 1915.

Date of Policy, July 23, 1914—in effect from July 10th, 1914. Amount, 456.90.

~~\$10,000.00~~

William C. Neasham:

a. 607 North Virginia Street, Reno, Washoe County, State of Nevada.

b. Same.

Oct. 18, 1912.

a. Rancher and Stockman.

b. Rancher and Stockman.

November 13th, 1866.

California.

From family record. Mar. 22, 1915.

a. Near Reno, Washoe County, Nevada.

b. February 27, 1915.

Our family physician is Dr. J. A. Ascher, of Sparks; no knowledge of Mr. Neasham consulting physician during past year.

Woodmen of the World, Certificate No. 75292, Washoe Camp No. 407. Amount, \$3,000.

William C. Neasham was my husband and I am the Beneficiary named in said Policy.

41.

Dated at Reno, Nevada, this 15th day of March, 1915.

Signature: MATILDA C. NEASHAM,

Postoffice Address: 607 N. Va. St., Reno, Nev.

**Physician's Statement No. 2—Proof of Death.**

NOTE.—This Statement must be entirely in the handwriting of the Physician.

**PROOFS OF DEATH.****PHYSICIAN'S STATEMENT No 2.**

(Before making out this Statement, read carefully the Special Instructions on the other side.)

1. Name of deceased in full.
2. How long had you known deceased?
3. Where did deceased reside at time of death?
4. What was deceased former residence?
5. What have been deceased several occupations to your knowledge?
6. What was the age at death?
7. State as accurately as you can the following facts in regard to deceased's personal appearance:
  - a. Place of death.
  - b. Date of death.
8. How long had you been the medical attendant or adviser of deceased?
  - a. For what diseases did you treat or advise deceased prior to last illness?
  - b. Give date, duration and result of each.
  - a. What disease was the immediate cause of death?
  - b. How long, in your opinion, did deceased suffer from this disease?
    - a. From what other important diseases, if any, did deceased suffer?
    - b. Give, as nearly as you can, the duration of each one.
9. When were you first consulted by deceased, or by any relative or friend, for the affection which either directly or indirectly caused death?
10. Was there any special cause, direct or indirect, for the death, in the use of alcoholic beverages, drugs, occupation or residence of deceased?
11. For how long a time was deceased confined to the house, or prevented from attending to business?
  - a. Was there a coroner's inquest or a post-mortem examination on the body of deceased?
  - b. If so, which, by whom and with what result?
12. Did any other physicians attend deceased during last illness? If so, give name and address of each.
  - a. Where did you receive your medical education?
  - b. What is the date of your graduation?

Dated at Reno, Nevada, this 15th day of March, 1915.



William C. Neasham.

18 years.

Reno, Nevada.

Sparks, “

Farmer and stockman.

48 years, — months, — days.

Height? — feet — inches. Color of hair? Dark.

Approximate weight in health? 190 lbs. Color  
of eyes? Brown.

a. Reno, Nevada.

b. February 27, 1915.

\_\_\_\_\_

a. \_\_\_\_\_

b. \_\_\_\_\_

a. Gunshot wound of head and brain.

b. Death was instantaneous.

a. None.

b. \_\_\_\_\_

\_\_\_\_\_

No.

\_\_\_\_\_

a. Yes, there was a coroner inquest.

b. Yes, I perform a post-mortem examination.

No.

a. Missouri Med. Col., St. Louis, Mo.

b. March 5, 1879.

Dated at Reno, Nevada, this 15th day of March,  
1915.

Signature:

S. C. GIBSON,  
Postoffice Address, Reno, Nevada.

**Friend's Statement No. 3—Proof of Death.**

**PROOFS OF DEATH.**

**FRIEND'S STATEMENT No. 3.**

This Statement must be made by a person of legal age, intimately acquainted with, but not related to the deceased, who is not interested in the claim, and has seen the remains.

1. Name of deceased in full.
2. How long have you known deceased?
3. Where has deceased resided during your acquaintance?
4. What have been deceased's several occupations?
5. What was the age of deceased?
  - a. Place of death.
  - b. Date of death.
6. Have you seen the body?
7. Do you know the deceased to be the person whose life was insured in the Policy of Insurance upon which the claim is based?
8. Date of burial.
9. Place of burial.
10. What is your age?
11. What is your occupation?
12. How long have you resided at your present address?
13. Are you a relative of deceased?
14. Are you, in any way, directly or indirectly interested in the proceeds of any insurance on the life of deceased?
  - a. Are you a policy-holder in this Company?
  - b. If so state the number of your policy.

Dated at Reno, Nev., this 15 day of March, 1915.

William C. Neasham.

Since January, 1901..

In Washoe County, Nevada.

Farmer and stockman.

About 49 years.

a. Washoe County, Nevada.

b. February 27, 1915.

Yes.

Yes.

March 2, 1915.

Mountain View Cemetery, near Reno, Nev.

53 years.

Manager Insurance Dept. Washoe County Bank.

16 years in Reno, 26 years in Washoe County.

No.

No.

a. No.

b. ———.

Dated at Reno, Nev., this 15 day of March, 1915.

Signature: C. R. CARTER.

Postoffice Address, 101 Ralston St., Reno, Nev.

**Plaintiff's Exhibit "D."**

Indorsed:

No. 1967.

U.S. Dist. Court  
Dist. Nevada.

Neesham

v.

New York Life Ins. Co.

Pliff's Ex. D.

Filed March 8th, 1910

T. J. Edwards, Clerk.

Pliff's D. for identification  
T.J.E.



Plaintiff's Exhibit "E."



INDEXED:

No. 1907.

U. S. Dist. Court,  
Dist. Nevada.

Neasham

v.

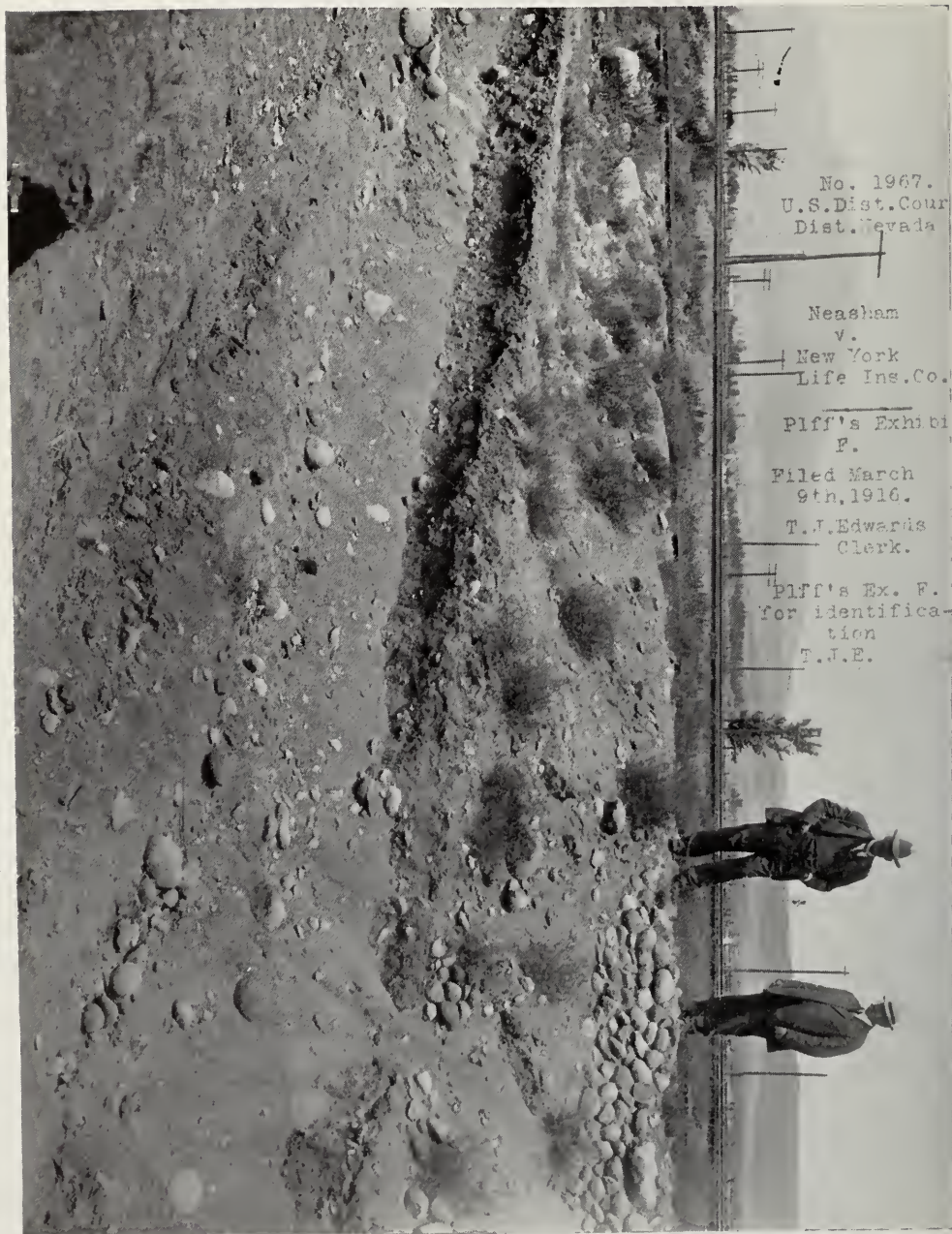
New York Life Ins. Co.

Pliff's Exhibit "E."

Filed March 9th, 1910.

T. J. Edwards, Clerk

Pliff's Ex. E. for identification.  
T.J.E.

**Plaintiff's Exhibit "F."**

No. 1967.  
U.S. Dist. Court  
Dist. Nevada

Neasham  
v.  
New York  
Life Ins. Co.

Pliff's Exhibit  
F.

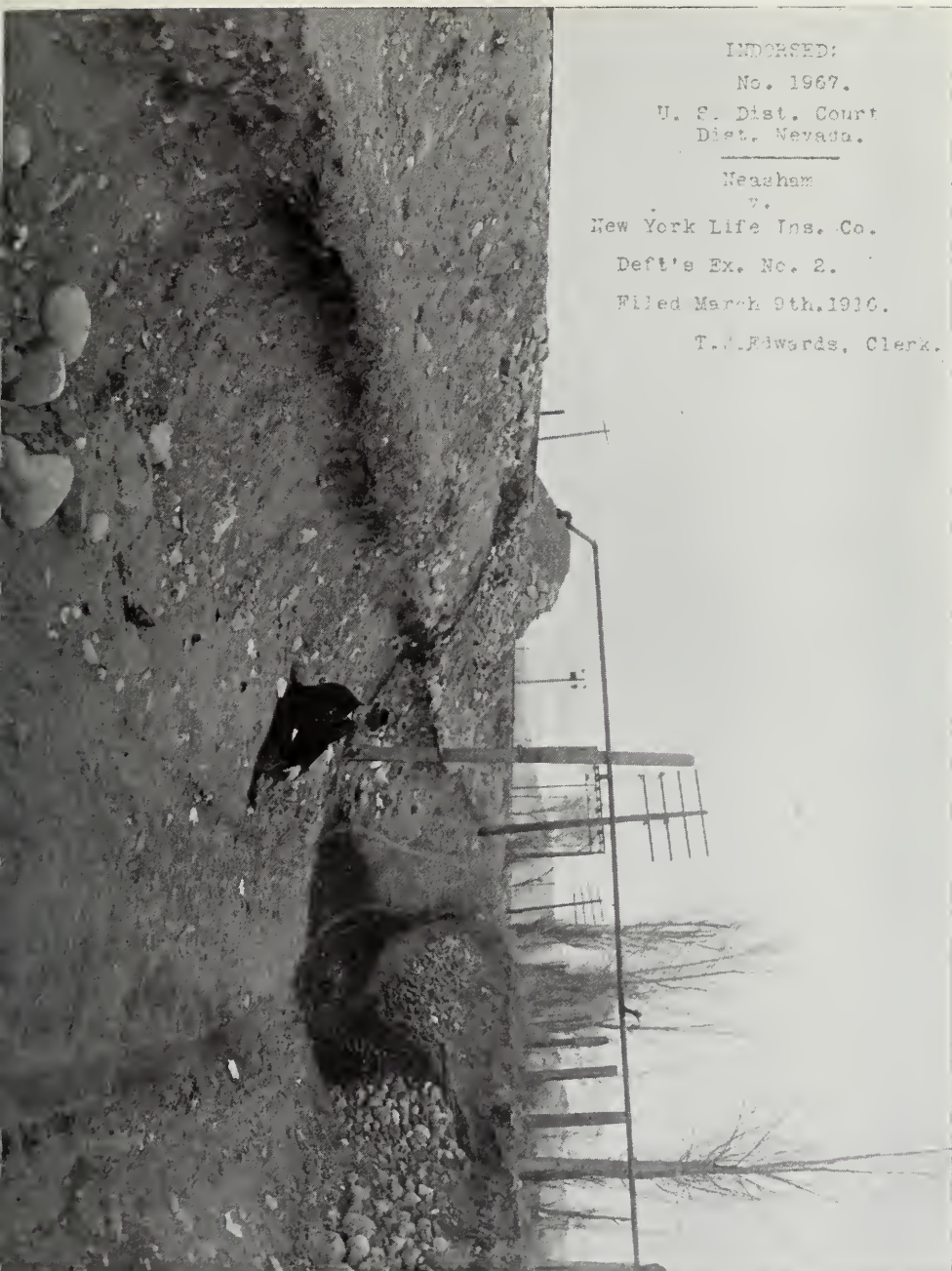
Filed March  
9th, 1916.

T. J. Edwards  
Clerk.

Pliff's Ex. F.  
For identifica-  
tion  
T. J. E.



**Defendant's Exhibit No. 2.**



INDEXED:

No. 1967.

U. S. Dist. Court  
Dist. Nevada.

Neasham

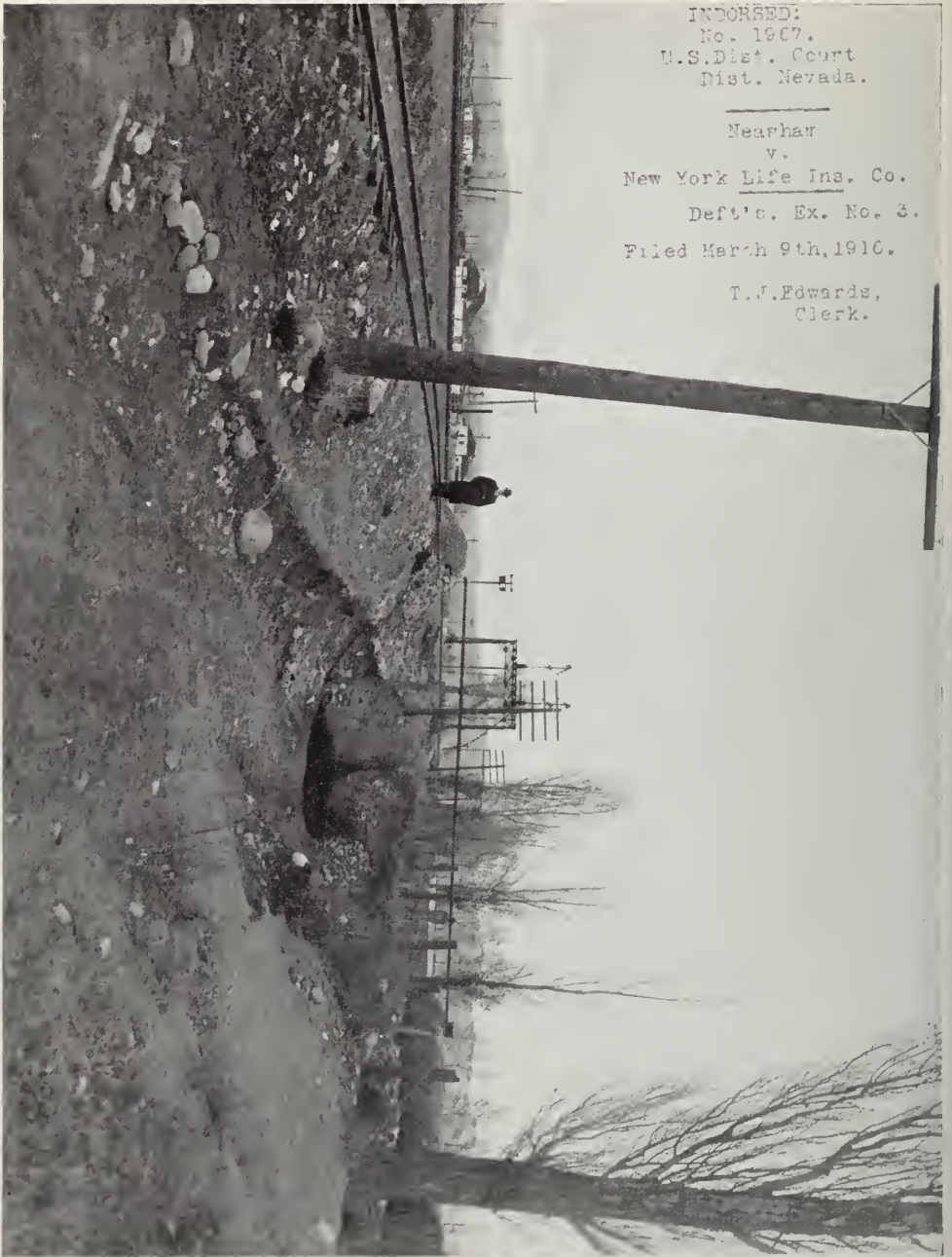
v.

New York Life Ins. Co.

Deft's Ex. No. 2.

Filed March 9th. 1916.

T. A. Edwards, Clerk.

**Defendant's Exhibit No. 3.**

INDORSED:

No. 1907.

U.S. Dist. Court  
Dist. Nevada.

Nearhar

v.

New York Life Ins. Co.

Def't's. Ex. No. 3.

Filed March 9th, 1910.

T. J. Edwards,  
Clerk.

**Certificate of U. S. District Judge to Bill of  
Exceptions, etc.**

The judgment in this case was entered on the verdict on March 10, 1916, and thereafter, on March 17, 1916, an order was granted by the Trial Judge in these words:

“Upon application of the above-named defendant, New York Life Insurance Company, a corporation, and good cause appearing therefor, and by consent of plaintiff’s attorney, [238] execution upon the judgment entered herein on the 10th day of March, 1916, is hereby stayed for a period of forty-two (42) days from the date of the entry of the judgment herein, upon defendant filing herein and within forty (40) days from the date of the entry of the judgment herein, a bond, subject to the approval of the court or the judge thereof, who tried the above-entitled action, properly conditioned with sufficient sureties or surety in the penal sum of \$10,000, in order to give the defendant, and defendant hereby is given, additional time, to wit, forty-two (42) days from the date of the entry of the judgment herein, to file in the Clerk’s office of the above-entitled Court its petition or motion for a new trial.

“It is further ordered that jurisdiction be and is hereby retained of and over the above-entitled case by said court over and beyond the February term, 1916, in order to enable and permit said defendant to file, and said defendant is hereby



given additional time, to wit, (20) days after decision or determination of defendant's said petition or motion for a new trial, within which to prepare, serve, present, have settled and authenticated and to file its bill of exceptions by it reserved; and that defendant's petition or motion for new trial, if filed, and that its bill of exceptions may be presented and allowed, authenticated, served, filed and determined after the expiration of the February Term, 1916, of said court, and for those purposes jurisdiction of this case is hereby retained."

The defendant, within forty-two (42) days granted by the order, filed its petition for a new trial, which was in due course submitted, and thereafter, on July 16, 1917, the Court filed its opinion thereon, and an order was entered in accordance therewith denying a new trial.

On January 16, 1917, defendant filed with the clerk the foregoing Bill of Exceptions, comprised within pages from 1 to 237, inclusive, but did not serve the same on plaintiff's counsel until the 21st day of July, 1917, after the entry of the order denying a new trial, at which time plaintiff's counsel refused to acknowledge or accept service thereof because served too late. Thereafter, on July 23, 1917, defendant presented its said bill to the undersigned, the Trial Judge, for certification as to its correctness. On July 24th the plaintiff's counsel, without proposing any amendments to the bill, interposed certain objections to its certification by the Judge, the main features of which are:

1. That "the exception to the charge, noted on pages 202-203 of the Transcript, is insufficient in that it does not state distinctly the portion or portions of the charge excepted to"; [239]

2. That "the Proposed Bill of Exceptions does not contain the opinion of the Court";

3. That "the Proposed Bill of Exceptions was not served or presented in time."

"The case was tried and judgment entered on the verdict on March 10, 1916. A new trial is not necessary for purposes of obtaining a review by the Court of Appeals (citing cases). 'No appeal or writ of error by which any order, judgment or decree may be reviewed in the Circuit Court of Appeals shall be taken or sued out except within six months after the entry of the order, judgment or decree sought to be reviewed.'

(4th Fed. Stats. Ann. 428.)

"In this instance the 'order, judgment or decree' sought to be reviewed was the judgment entered March 10, 1916. The motion for a new trial is not subject to review. It seems clear, therefore, that the presentation of the Proposed Bill of Exceptions at this late day is a mere idle and vain thing, since if a petition for writ of error were now presented, the writ ought not to issue."

Being of opinion that these objections, so far as material, present questions for the consideration of the Court of Appeals upon the writ of error, should one be sued out, and may not be competently disposed of here; and it appearing that the Proposed Bill of Exceptions comprises all the evidence and proceed-

ings had at the trial (excepting only Plaintiff's Exhibit "C," a coat, and Defendant's Exhibit 1, a pistol, magazine and cartridges), and has been served within the time prescribed by the orders of the Court, the same is hereby certified by me to be in all respects true and correct as to the facts therein recited; the purpose of this certificate being to present the record of the proceedings had in the court below to the Circuit Court of Appeals, preserving the rights of both parties upon the facts recited, to have determined by said last-mentioned court as to the validity of the orders extending time to settle this bill, and whether or not such Bill of Exceptions has been presented and certified in time to be of avail [240] in reviewing the Judgment.

Dated, August 7th, 1917.

WM. C. VAN FLEET,  
Judge.

[Indorsed.] [241]

---

[Title of Court and Cause.]

**Order Directing Transmission to Appellate Court of  
Certain Original Exhibits.**

It appearing to the Court that plaintiff's original Exhibit "C," being a coat, and defendant's original Exhibit 1, being pistol, magazine and cartridges, should be inspected by the Court of Appeals in connection with the record on Writ of Error.

It is hereby ordered that said exhibits be forwarded with the record, and that said exhibits be returned to the clerk of the above-entitled court in due course.



Dated, September 12th, 1917.

WM. C. VAN FLEET,  
District Judge.

[Indorsed.] [244]

---

[Title of Court and Cause.]

**Affidavit of Reta S. Arkell of Service of Bill of  
Exceptions.**

State of Nevada,  
County of Washoe,—ss.

Reta S. Arkell, being first duly sworn, upon oath deposes and says: That she is a citizen of the United States, a resident of the State of Nevada, over the age of twenty-one years, and was at all times herein mentioned; that on the 21st day of July, 1917, she personally served upon Thomas E. Kepner, attorney for plaintiff in the above-entitled action, at his law office in Reno, Nevada, a bill of exceptions in the above-entitled action, by presenting and showing to said Thomas E. Kepner the original bill of exceptions, and by delivering to and leaving with said Thomas E. Kepner, a full, true and complete copy of said bill of exceptions, in the above-entitled action, at the time and place hereinabove mentioned.

RETA S. ARKELL.

[Indorsed.] [245]

PO. San Francisco, Cal.  
338 PM. Sept. 12-17.

Thos. J. Edwards,  
Clerk U. S. District Court,  
Carson City, Nev.

Have today made order in Neasham versus New  
York Life extending time for filing record to Octo-  
ber first.

WM. C. VAN FLEET.

[Indorsed.]

[Title of Court and Cause.]

**Order Extending Time to File Record to October 1,  
1917.**

Good cause appearing therefor, it is ordered that  
the defendant have to and including October 1, 1917,  
within which to file in the Court of Appeals the rec-  
ord on writ of error, heretofore issued in the above-  
entitled case.

Dated, September 12th, 1917.

WM. C. VAN FLEET,  
District Judge.

[Indorsed.]    [246]

---

[Title of Court and Cause.]

**Certificate of Clerk U. S. District Court to  
Transcript of Record.**

I, T. J. Edwards, Clerk of the District Court of the  
United States for the District of Nevada, do hereby  
certify that the foregoing two hundred and forty-six  
(246) typewritten pages, numbered from 1 to 246,  
inclusive, to be a full, true and correct copy of the

record and of all the proceedings in said cause and court, and that the same, together with the original Citation and Writ of Error, hereto annexed, constitute the return of the Writ of Error.

I do hereby certify that the costs of the foregoing record is \$138.80, and that the same has been paid by the defendant herein.

I further certify that pursuant to order of Court, found on page 244 of this record, I have this day forwarded to the clerk of the U. S. Circuit Court of Appeals, plaintiff's original Exhibit "C," and defendant's original Exhibit 1, introduced and filed in said cause.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in Carson City, Nevada, this 29th day of September, 1917.

[Seal]

T. J. EDWARDS,  
Clerk. [247]

---

[Title of Court and Cause.]

**Citation on Writ of Error.**

To Matilda C. Neasham, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at the city of San Francisco, State of California, thirty days from and after the date this citation bears, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the District of Nevada, wherein New York Life Insurance Company, a corporation

is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against said New York Life Insurance Company, a corporation, plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

WITNESS Honorable WM. C. VAN FLEET,  
Trial Judge of the District Court of the United  
States for the District of Nevada, this 13th day of  
August, A. D. 1917.

WM. C. VAN FLEET,  
United States District Judge.

[Indorsed.] [248]

---

[Title of Court and Cause.]

**Writ of Error.**

United States of America,  
Ninth Judicial Circuit,—ss.

The President of the United States of America to  
the Honorable Judge of the District Court of the  
United States for the District of Nevada, Greet-  
ings:

Because in the record and proceedings, as also in  
the rendition of the judgment of a plea which is in the  
said District Court before you between New York  
Life Insurance Company, a corporation, plaintiff in  
error, and Matilda C. Neasham, defendant in error,  
a manifest error has happened to the damage of New  
York Life Insurance Company, a corporation, plain-  
tiff in error, as by said complaint appears, and we

be willing that error, if any should have been, should be corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, where said court [250] is sitting, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held, and the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct the error what of right, and according to the laws and customs of the United States, should be done.

WITNESS Honorable EDWARD D. WHITE,  
Chief Justice of the United States, this the 13th day  
of August, A. D. 1917.

[Seal] T. J. EDWARDS,  
Clerk of the United States District Court for the  
District of Nevada.

By H. D. Edwards,  
Deputy.

Allowed this the 13th day of August, A. D. 1917.

WM. C. VAN FLEET,  
United States District Judge.

[Indorsed.] [251]

[Endorsed]: No. 3057. United States Circuit Court of Appeals for the Ninth Circuit. New York Life Insurance Company, a Corporation, Plaintiff in Error, vs. Matilda C. Neasham, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Nevada.

Filed October 1, 1917.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

*United States Circuit Court of Appeals for the Ninth  
Circuit.*

No. 3057.

NEW YORK LIFE INSURANCE COMPANY, a  
Corporation,

Plaintiff in Error,

vs.

MATILDA C. NEASHAM,

Defendant in Error.

**Stipulation and Statement In Re Printing Record, in  
Above-entitled Case, Under Rule 23.**

IT IS HEREBY STIPULATED AND AGREED  
by and between the undersigned, attorneys for the  
respective parties hereto, as follows:

1. That for consideration of errors assigned and  
filed herein only parts of the record need be printed.



2. That this stipulation and statement may be printed as a part of the record herein.

3. That this cause was commenced by defendant in error, as plaintiff, against plaintiff in error, as defendant, April 30, 1915, by filing complaint in, and having summons issued out of, the Second Judicial District Court of the State of Nevada, in and for the county of Washoe; that such summons was served and thereafter and within the time authorized, upon application of the defendant, plaintiff in error, due and legal proceedings were had whereby such cause was duly and regularly removed into the District Court of the United States, for the District of Nevada; and such record so removed was filed in said Court within the statutory time, and on June 8th, 1915.

4. That on March 10, 1916, and immediately after the verdict and judgment was returned and entered, upon motion of defendant a minute order was entered, whereby it was ordered that execution herein be stayed 42 days upon the filing of a bond in the sum of \$10,000; and that defendant have 42 days within which to take such further steps herein as advised; that thereafter a written "Order Staying Execution and Extending Time for Filing Petition or Motion for New Trial and for Bill of Exceptions," was made March 17, 1916, served and filed March 18, 1916; that thereafter and within the time allowed a "Bond for Stay of Execution" was tendered, approved and filed.

5. That thereafter and on April 17, 1916, and within the time allowed defendant served and filed

its "Notice of Motion or Petition for New Trial" and its "Petition or Motion for New Trial," with certification endorsed thereon by the trial judge allowing same to be filed.

6. That by orders of Court duly and regularly made and entered, jurisdiction was retained over the case from term to term of said court to enable defendant to prepare, serve, have settled and allowed and to file its bill of exceptions, and to have its petition or motion for new trial heard and determined; that within the time allowed the defendant did prepare, serve and had allowed and settled and filed its Bill of Exceptions by it reserved; that defendant's petition of motion for new trial was denied July 16, 1917.

7. That thereafter and within the time allowed, defendant's petition for Writ of Error and Assignments of Errors were served and filed; Writ of Error granted, amount of Supersedeas Bond fixed, bond given, approved and filed; Writ of Error and Citation issued, served and filed.

8. That thereafter and within the time allowed a full, true and correct copy of the record and all of the proceedings in said cause and court, together with original Citation and Writ of Error, was filed in the above-entitled court and docketed October 1, 1917.

9. That under and by virtue of the foregoing stipulation, the clerk of this court is requested *not* to have printed the following mentioned papers, appearing in said original certified record, at pages designated, to wit:

Papers.

Pages of Original  
Certified Record.

Summons, sheriff's return and endorsement . . . .	5-6
Order of removal and endorsement . . . . .	6-7
Notice of hearing and endorsement . . . . .	36
Endorsement . . . . .	42
Order and endorsement . . . . .	43
Order and endorsement . . . . .	44
Writ of error bond, and endorsement . . . . .	59-60
Praeipie and endorsement . . . . .	242-3

10. That Exhibit "A" to the complaint is a complete copy of the insurance policy or contract sued upon; that Plaintiff's Exhibit "A" upon the trial is the same complete insurance policy or contract appearing as Exhibit "A" to the complaint; that much of said policy or contract, under the assignment of errors filed is immaterial.

The Clerk is, therefore requested to have printed only the following designated parts of said insurance policy or contract appearing as Exhibit "A" to complaint and as Plaintiff's Exhibit "A" upon the trial, to wit:

Print only first page of policy, being page 3 and page 216 of the original certified record, and that part of said policy appearing on page 3 thereof under "Section 5—Other Benefits and Provisions" reading as follows,—

"SELF-DESTRUCTION.—In event of self-destruction during the first insurance year, whether the Insured be sane or insane, the insurance under this Policy shall be a sum equal

to the premiums thereon which have been paid to and received by the Company, and no more."

No other part of said policy than that above designated, appearing in the original certified record at pages 3 and 216, is to be printed.

11. That of Plaintiff's Exhibit "B," proofs of death, appearing in original certified record at p. 217, the clerk is requested not to have printed the oath to claimant's physician's or friend's statement, nor the certification of the county clerk to the notary taking such oaths; neither will the clerk have printed any matter appearing on the back of either of said proofs of death—printing only claimant's, physician's and friend's statement, omitting all other portions of said Exhibit "B."

12. That Defendant's Exhibit 4, appearing in the original certified record at pages 223 to 238, both inclusive, is certified by the county clerk as containing and comprising true, full, perfect and complete copies of "Inventory and Appraisement," "Petition for Sale of Real Estate" and "Order of Sale of Real Estate," In the Matter of the Estate of William C. Neasham, Deceased.

It appears therein—that defendant in error is the administratrix of the Estate of William C. Neasham, deceased, the insured in this case; that all the real property of said estate was appraised at the total sum of \$25,000 and that all the personal property that came into the hands of the administratrix was of the total value of \$7,630.67; that all of the property of the estate is community property; that claims

against said estate paid, and unpaid which have been allowed and approved, including the balance due on contract to purchase some of the real estate amount to the sum of \$24,721.60; cash in bank at time of death of William C. Neasham, deceased, \$844.06; that on October 27, 1915, said administratrix filed in the Second Judicial District Court of the State of Nevada, in and for the County of Washoe a petition seeking an order authorizing the sale of the real estate of said estate for the purpose of paying debts of said estate; in said petition, *inter alia*, petitioner alleged that in addition to the indebtedness set forth in Schedule B there will be the unpaid charges and expenses of administration which have accrued and which may yet accrue before the administration is finally completed and closed, which will, as petitioner believes and therefore alleges, amount to the approximate sum of \$1,000; and that there will yet accrue for the maintenance of the family of the deceased the sum of \$100 per month, payable until the further order of the court. Your petitioner therefore, alleges: That the personal property in the hands of your petitioner was insufficient to pay said family allowance, the debts outstanding against the said deceased and the unpaid expenses and charges of administration which have accrued, and which may yet accrue, and for the purpose of paying the same, it is necessary to sell the whole or the greater portion of the real estate described in Schedule C hereto annexed.

That thereafter and on November 18, 1915, said Court made and entered an order of sale authorizing



the sale of all said real estate to pay the claims secured by mortgage upon the farm lands therein described and to pay other claims and indebtedness against said estate, including charges and expenses of administration.

That in view of the foregoing statement as to the substance of defendant's said Exhibit 4, it is not necessary to print any part thereof, and the clerk is requested not to print any part of said Defendant's Exhibit 4, appearing at pages 223 to 238, both inclusive.

13. That the printing of the venue and title of the case as same appears at the beginning of each paper filed and as same appears endorsed upon each paper filed will not aid the Court in determining errors assigned; we therefore request that such venue and title of the case so appearing upon the papers filed be not printed—with the sole exception of the venue and title and endorsement appearing on the complaint herein; and since it is agreed by the parties hereto that all steps were taken and all pleadings served and filed and all proceedings were taken, served and filed or had within the proper time allowed for same, it will not aid the Court in determining the errors assigned to have printed the various endorsements showing service and filing of the various papers making up the record; we therefore request that none of the endorsements upon any of the papers except the complaint be printed; that all papers and documents not hereinabove requested to be omitted from the printed record are to be printed.



Dated: Reno, Nevada, October 16, 1917.

CHENEY, DOWNER, PRICE & HAWKINS,  
Attorneys for Plaintiff in Error.

THOMAS E. KEPNER,  
Attorney for Defendant in Error.

[Endorsed]: No. 3057. United States Circuit Court of Appeals for the Ninth Circuit. New York Life Insurance Company, a Corporation, Plaintiff in Error, vs. Matilda C. Neasham, Defendant in Error. Stipulation and Statement in Re Printing Record, etc. Filed Oct. 17, 1917. F. D. Monckton, Clerk.

---

WESTERN UNION TELEGRAM.

Received at Post Office Building, 7th and Mission Sts.  
78sf ms 27 blue 4 ex

Carson City, Nev., 249pm, Sept. 11, 1917.

Hon. Wm. W. Morrow, U. S. Circuit Judge, San Francisco, Calif.

Please wire order extending time to October first to file record on writ of error case of Neasham against New York Life Ins. Co.

T. J. EDWARDS,  
Clerk U. S. Dist. Court.  
427pm.

*United States Circuit Court of Appeals for the Ninth Circuit.*

NEW YORK LIFE INSURANCE COMPANY, a  
Corporation,

Plaintiff in Error,

vs.

MATILDA C. NEASHAM,

Defendant in Error.

**Order Extending Time to File Record and Docket  
Cause to October 1, 1917.**

Upon telegraphic application of the clerk of the United States District Court for the District of Nevada, this day filed, and good cause therefor appearing, ORDERED time to file Transcript of Record and to docket the above-entitled cause in this court be, and hereby is extended to October 1, 1917.

WM. H. HUNT,

United States Circuit Judge.

Dated San Francisco, California, September 12, 1917.

[Endorsed]: No. 3057. United States Circuit Court of Appeals for the Ninth Circuit. New York Life Insurance Company vs. Neasham. Order Under Rule 16 Enlarging Time to Oct. 1, 1917, to File Record Thereof and to Docket Case. Filed Sep. 12, 1917. F. D. Monckton, Clerk. Refiled Oct. 1, 1917. F. D. Monckton, Clerk.